Environment Canada | Environnement Canada

CEPA Review:

Compilation of Comments on The Government Response

"Environmental Protection Legislation Designed for the Future - A Renewed CEPA"

Volume 2
As of April 30, 1996

L'examen de la LCPE :

Compilation des commentaires sur la réponse du gouvernement

"Mesures législatives sur la protection de l'environnement conçues pour l'avenir - Une LCPE renouvelée"

Volume 2
en date du 30 avril 1996

Canada

Environment Canada
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Canada

For more information on CEPA, please contact:

The CEPA Office
Environmental Protection Service
Environment Canada
OTTAWA, Ontario
K1A OH3

Voice: (819) 953-0152
Fax: (819) 997-0449

These comments appear in the language of submission. Only comments relating directly to CEPA have been included in these volumes. Questions concerning any attachments or reports should be sent directly to the submitter.

Pour obtenir plus d'information sur la LCPE, veuiller communiquer avec:

Bureau de la LCPE
Service de la protection de l'environnement
Environnement Canada
Ottawa (Ontario)
K1A OH3

Téléphone: (819) 953-0152
Télépcopieur: (819) 997-0449

Les présents commentaires sont présentés dans la langue dans laquelle ils nous ont été transmis. Seuls les commentaires axés directement sur la LCPE ont été inclus dans ces volumes. On devrait adresser à l'auteur de chaque commentaire toute question concernant les documents joints ou les rapports connexes.

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LIST OF SUBMITTERS (as of April 30, 1996)
CEPA Review: Compilation of Comments on the Government Response
LISTE DES DÉPOSANTS (en date du 30 avril 1996)
Examen de la LCPE : compilation des commentaires sur la réponse du gouvernement

Alberta Federation of Labour

Beach, Dorothy

Birrell, Margaret

British Columbia Government, Ministry of Environment, Lands & Parks

Canadian Environment Industry Association

Canadian Fabricare Association

Canadian Federation of Humane Societies

Canadian Manufacturers Association

Cleary, Ann

Environmental Mining Council of British Columbia

Godard, Randall

Hancock, Lorna J.

Health Action Network Society

Inuit Tapirisat of Canada

National Agriculture Environment Committee

Nunavut Tunngavik Inc.

Ontario Chamber of Commerce

Ontario Government, Ministry of Environment & Energy

Ontario Occupational Health Nurses Association

Parker, Lila

Quinte Environmental Resources Alliance

Sioux Lookout Citizens Group

Vinyl Council of Canada

Alberta Federation of Labour
350, 10451 - 170 Street Edmonton, AB T5P 4T2 (403) 483-3021 FAX (403) 484-5928

drey M. Cormack
sident

s Steel
cretaryTreasurer

60810167

March 19, 1996

The Rt. Honourable Jean Chretien
Prime Minister
Government of Canada
Langevin Block
80 Wellington Street
Ottawa, Ontario
K1A 0A2

Dear Sir:

Re: Canadian Environmental Protection Act (CEPA)

I am writing on behalf of the 110,000 members of the Alberta Federation of Labour, and their families, to express our concern with the proposed changes to the Canadian Environmental Protection Act (CEPA). Having reviewed your government's propsals, we have come to the conclusion that the changes fail to strengthen the Act in the areas of pollution prevention, regulation of toxic substances, access to information and environmental rights.

Working Albertans want to see a federal government that takes a strong leadership role in environmental protection by setting firm environmental standards, banning or phasing out the use and release of toxic chemicals that persist in the environment and build up in wildlife or humans, and by passing an Environmental Bill of Rights (which includes the right to intervene when the environment is being harmed; and to sue polluters who break the law).

We also believe the Canadian public should have the right to know who is releasing pollutants into our environment, through comprehensive public access to information. In addition we believe the regulation of biotechnology is essential for the protection of human health, safety and the environment, and that such protection should be part of a new, strengthened CEPA. Finally, we support the position that all sectors of society should be required to prevent the use and generation of pollutants rather than only working to control them. In our view, control of pollutants is nothing more than a time bomb waiting to go off.

We support the points in the joint submission to your government entitled "It Is Still About Our Health", most of which have been unanimously adopted as policy by our members.

Thank you in advance for your attention to this matter.

Yours truly,

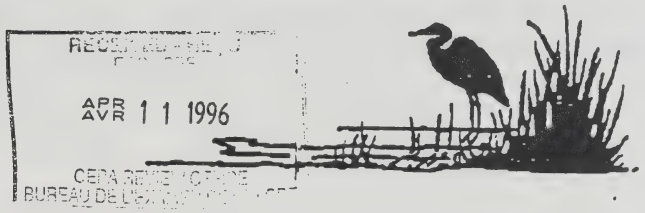
Audrey M. Cormack
President

GF*klm/opeiu #458
cc: Canadian Environmental Network (CEN)
file: \95-97sc\env\chretien

March 22, 1996

DEAR HONOURABLE DAVE DINGWALL (613) 952-1154
Dear Honourable Sergio Marchi (819) 953-3457
Dear Paul Forseth MP 666-5520

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Dorothy Beach

Address: 1907 River Drive
New Westminster, B.C. V3M2A7
(604) 522-3580

Convenor Environment and Health
New Westminster Local Council of Women
Convenor Environment Provincial
Council of Women of British Columbia

Margaret Birrell #608-1445 Marpole Avenue, Vancouver, BC V6H 1S5 733-3497

March 21, 1996

0-1025-

Rec'd - DCU - DOE

The Hon. Sergio Marchi
Minister of the Environment
Parliament Buildings.
Ottawa K1A 0A2

APR AVR 10 1996

139382

Reçu - UCM - MDE

Dear Mr. Minister:

The report of the House of Commons Standing Committee on Environment and Sustainable Development was very aptly entitled "It's About Our Health! Towards Pollution Prevention". There is now growing agreement that environmental pollution is contributing to the health problems of Canadians. For example, the build-up of toxic substances may be implicated in the rapid and frightening increase in the incidence of breast cancer in women and testicular and prostate cancer in men. In addition, many scientific studies are warning that the persistence of organo-chlorines in the environment may pose a threat to the nervous, endocrine, and immune systems of our children.

Indeed, it is only common sense to acknowledge that the health of all Canadians is affected by air and water pollution, soil contamination, ozone depletion, and the continuing release of toxic substance into the environment.

I was therefore dismayed to learn that the federal proposals for reform of the Canadian Environmental Protection Act put forward in December, 1995, either reject or ignore most of the 141 recommendations of the Standing Committee's report. The federal response either neglects or undermines the government's responsibility in such vital matters as the regulation of biotechnology, ocean dumping, toxic substances assessment, and environmental law enforcement, among others.

The Government of Canada has a responsibility to protect and enhance the health of all Canadians, and particularly the health of our children. Population health must not be sacrificed in the interest of development. Moreover, Canadians have a right to be informed about developments which may have an adverse effect on their environment, and to participate in environmental decision-making.

By taking a firm stand in setting environmental standards, your government can set an example for the rest of the world. I urge you to lend the authority of your ministry to the recommendations of the Standing Committee on Environment and Sustainable Development to ensure that the Canadian Environmental Protection Act is both strengthened and expanded, and that its provisions are enforced with the utmost rigour.

Yours truly

Margaret Birrell
608-1445 Marpole St.
Vancouver V6H 1S5
(604) 733-3497

Province of British Columbia

OFFICE OF THE DEPUTY MINISTER

Ministry of Environment, Lands and Parks

Parliament Buildings
Victoria
British Columbia
V8V 1X5

47153 DM

APR. 10. 1996

Rec'd - [illegible]

[illegible] 1996

Resp - [illegible]

Mel Cappe
Deputy Minister
Environment Canada
Ottawa ON K1A 0H3

Dear Mel Cappe:

I am writing to bring to your attention the perspective of the Ministry of Environment, Lands and Parks regarding the document "CEPA Review: The Government Response". The review of the Canadian Environmental Protection Act (CEPA) has been an extensive process, and the province has a keen interest in the outcome. It is our desire that the renewed CEPA will minimize federal overlap and duplication of provincial activities, and provide a vehicle for better harmonization in those areas where there is a shared interest. For example, I suggest that a renewed CEPA enable the development of agreements with provinces that will provide a "single window" for enforcement and compliance purposes.

I was pleased to see in the proposal for a renewed CEPA, the commitment to build on the work of the Canadian Council of Ministers of the Environment in the area of cleaner vehicles and fuels. This is an important national issue, and we will be pleased to continue working with Environment Canada in the development of national regulations.

The proposal to improve CEPA as it applies to federal works and undertakings is a welcomed development. However, we have some concerns that the new definitions of "federal lands" and "Aboriginal lands" will hinder the application of this new regime to existing Indian Reserve lands. I would appreciate your clarification on this point.

Biotechnology is a growing area of concern for many jurisdictions, and an area that could best be addressed through strong federal leadership. This is in part because of the limited resources and expertise generally available to provinces, when compared to the federal presence already in this field. I am disappointed that the Government Response did not propose a bigger role for CEPA in the evaluation and regulation of biotechnology and its wastes.

There are several areas where it appears that the federal government is proposing to expand the application of CEPA without due regard for current provincial activities. This could lead to duplication, something to be avoided

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especially in times of diminishing resources. Pollution prevention planning is an important shift in the way governments and industry do business. It is an area that British Columbia is pursuing vigorously. Our approach is to look at the total waste stream of a facility, and work with the private sector operator to develop a plan that will prevent pollution and satisfy our standards. The CEPA approach outlined in the Government Response is a single substance approach. I would appreciate your assurances that the renewed CEPA will recognize provincial efforts in pollution prevention planning, and include a mechanism for accepting such plans as satisfying the requirements of CEPA.

Further clarification would be appreciated regarding the proposal to expand the application of CEPA to international water pollution. As phrased in the Government Response, it would appear that CEPA will become a tool to "prevent transboundary water pollution". Does this mean federal regulation of sources regardless of their distance from the boundary? Would the application of CEPA be limited to those substances on Schedule I, or any substance that is considered to constitute "water pollution"? Please let me know your intent.

The Government Response provides a sense of direction that the federal government will be moving in to renew CEPA. However, there is a great deal of detail missing. In order to ensure the development of effective legislation, and to avoid or minimize duplication and overlap with provincial activities, I suggest that the Federal-Provincial Advisory Committee continue to be involved throughout the process of amending CEPA.

Sincerely,

Greg Kayll

Thomas Gunton
Deputy Minister

CEIA Canadian Environment Industry Association
Association Canadienne des Industries de l'Environnement

March 22, 1996

The Honourable Minister Sergio Marchi
Minister of the Environment
Environment Canada
10 Wellington Street
Terrasses de la Chaudière
Hull, Quebec
K1A 0H3

Dear Minister:

The Canadian Environment Industry Association (CEIA) would like to take this opportunity to acknowledge the commendable and solid effort that produced ***CEPA Review: The Government Response***. CEIA's assessment of the document shows that many of the sound recommendations of the Standing Committee remain intact, and that the **Response** goes even further to help build greater understanding of the economy and environment issue for all society sectors.

Having been involved in the CEPA Review process since June 1994, beginning with our first appearance before the Commons Standing Committee, we recognize that the policy development process is not an easy one. Our Association worked hard to come to a consensus position on the many issues addressed in CEPA. And it helped lay the foundation for subsequent policy work. Likewise, we are sure that embracing sustainable development, pollution prevention, and the precautionary principle as government's guiding principles will be the basis for a more competitive Canadian industry and cleaner environment.

We would like to thank your government for the opportunity of participating in this worthwhile and important process. CEIA looks forward to our continued working partnership towards a healthy economy and environment.

Yours very truly,

G. Steve Hart
President

204-6, Antares Dr., Phase II / 204-6, prom. Antares, Phase II
Nepean, Ontario K2E 8A9
Tel.: (613) 723-3525 Fax.: (613) 723-0060

Canadian Fabricare Associati

P.O. Box 24026, Kitchener, Ontario N2M 5P1 • Tel (519) 576-4500 Fax (519) 576

Rec'd - DCU - DOE

MAR 15 1996

Reçu - UCM - MDE

March 1, 1996

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0-1025-1
138780

Honourable Sergio Marchi
Minister of Environment
Room 103 S, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister,

The Canadian Fabricare Association extends congratulations on your appointment as Minister of Environment, and trusts that it may be of service to you and your Ministry in dealing with issues relative to the dry cleaning and laundry industry in Canada.

We wanted to make you aware that as an Association representing the Canadian fabricare industry, we fully support the recommendations contained in the CEPA Strategic Options Report for the Management of Toxic Substances, dealing with tetrachloroethylene in the dry cleaning sector. We urge your Ministry support the report and to implement the recommendations it contains.

As an Association we appreciate the work done by Task Force Chairman Ed Wituschek, and Environment Canada staff, in achieving a set of recommendations that can be supported by industry. We would also appreciate an opportunity to meet with you and your staff to further discuss how these recommendations can best be implemented. We look forward to receiving your advice as to when such a meeting would fit into your schedule.

In addition to the undersigned, the following Association officials would attend such a meeting:

Bruce Reid, President
c/o Laycocks Cleaners
425 Pinedale Rd
Gravenhurst, Ontario
P1P 1L8

Ken Adamson, Chrmn. Environment Committee
c/o Langley Parisian Inc
12 Walnut Street South
Hamilton, Ontario
L8N 2K7

We again extend our congratulations on your appointment, and look forward to being of service to your Ministry in dealing with issues relative to our industry.

Yours truly

V.W. (Vic) Vandermolen, CAE
Executive Director

c.c. Constituency Office

Canadian Federation of Humane Societies
La Fédération des sociétés canadiennes
d'assistance aux animaux

139398

April 2, 1996

Rec'd-DCU-DOE
APR AVR 10 1996
Reçu-UCM-MDE

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudière
10 Wellington Street
Hull, Québec
K1A 0H3

0-1025-31
2-4054-1

The Honourable Mr. Marchi,

I am writing to express the grave concerns of the Canadian Federation of Humane Societies regarding the direction the government is taking on the issue of biotechnology. Following a five-year review of CEPA, the Standing Committee on Environment and Development recommended that a new section be added to CEPA to provide standards and procedures for the assessment of the environmental and human health impacts of biotechnology products. Instead, the government proposed to add to CEPA a section on biotechnology that would exempt from the requirements of CEPA, products which are or may be regulated under other acts. This would significantly weaken the existing regulatory framework by eliminating the current minimum standard for health and environmental assessment of all biotechnology products.

Biotechnology is a rapidly-developing field with profound implications for plant, animal and human life. As such, the government of Canada has a responsibility to establish requirements for the assessment of biotechnology products in terms of their potential immediate or long-term, direct or indirect effects on human and animal life and health, as well as the health and biodiversity of our environment.

It is important that the review process allow for public awareness and input. The Canadian public should have the right to comment on the approval and field testing of biotechnology products that could have long-term direct or indirect effects on all life forms.

In summary, I urge you to implement a compulsory stringent review of all developments in biotechnology, under the CEPA. This should be done to protect animals, humans and the environment from the potential effects of genetic

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manipulation. It needs to be realized that not all scientific advancements are positive in the long term. The Canadian government should take a strong stand in monitoring all developments and preventing the implementation of technology that threatens the health of animals, humans and our environment.

I look forward to your response.

Sincerely,

Shelagh MacDonald
Program Director

The Canadian Manufacturers' Association

Helping Manufacturers Grow

April 23, 1996

The Honourable Sergio Marchi
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec
K1A 0H3

The Honourable David Dingwall
Minister of Health
Confederation Building, Room 607
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ministers:

The Canadian Manufacturers' Association welcomes the opportunity to comment on the Federal Government's Proposal: *Environmental Protection Legislation Designed for the Future - A Renewed CEPA*.

CMA's National Environmental Quality Committee (the EQ Committee) followed the House of Commons Standing Committee on Environment and Sustainable Development (the Standing Committee) statutory review of the Canadian Environmental Protection Act (CEPA). In a letter to Ms. Sheila Copps, the then Minister of the Environment, the EQ Committee identified recommendations it could support and others with which it had considerable concern.

In reviewing the Government's Response, the EQ Committee looked for assurances that the Federal Government had assessed critically the Standing Committee's recommendations in light of the significant challenges facing Canada as a result of a globalizing economy; these cannot be ignored if Canada is to continue to prosper economically and achieve sustainable development. From CMA's perspective, these trends include:

- there has been an ongoing failure over several decades on the part of the federal and provincial governments to develop collaborative approaches for environmental policy-making; this has created uncertainty in the view of manufacturers as to whether environmental protection goals are being appropriately identified and achieved with efficiency;

- there is an increasing potential for conflict between international trade policy and the pursuit of domestic and international environmental objectives if an appropriate balance is not found;

.../2

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Ottawa, Ontario K1P 6E2
Tel: 613-233-8423

- the Federal Government has identified as a priority, the need to improve the regulatory systems in which their clients operate so as to reduce regulatory burden and enforcement costs;

- modern industry supports sustainable development and a philosophy of continuous improvement to ensure its competitive advantage in a transforming international economy. The perception exists that governments do not fully realize these circumstances and are failing to act upon them in environmental policy-making;

- the content of international environmental negotiations increasingly has implications for Canada's national agenda and will involve more issues of provincial jurisdiction. The Federal Government needs to be better organized internally to more effectively address provincial issues to build strong national consensus in order to ensure Canada's influence in international negotiations.

The EQ Committee's views concerning the proposals in the Government Response were developed within a framework of these trends. At the same time, the EQ Committee notes that the Government is aware that environmental policy-making requires changes to address today's realities. The Speech from the Throne to open the Second Session of the Thirty-Fifth Parliament of Canada, February 27, 1996 in the Environmental Security Section, at page 5, states:

> *The solutions to many environmental problems lie outside our borders. The Government will continue to play an environmental leadership role both at home and in the international arena.*

The EQ Committee urges you, as Ministers responsible for the development of draft legislation to renew CEPA, to be guided by these trends and statements on environmental security in your policy decision-making. The need for competent environmental policy-making has never been greater.

The Federal Government Proposals to Renew CEPA

Overall, the EQ Committee believes that the Federal Government has identified a broad range of important areas for its upcoming consultations and thereafter as the basis for developing a legislative framework to modernize the Canadian Environmental Protection Act (CEPA).

The EQ Committee strongly suggests that the Government's next phase should be focused on narrowing down the array of proposals to a manageable group of publicly credible options that will:

- result in federal provincial cooperation in setting and achieving concrete environmental protection goals;

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- produce a legislative package that focuses more on preventative policies and programs for achieving environmental goals rather than on provisions which emphasize reaction and enforcement;
- restore business confidence that government environmental policy-making will address competently changing domestic and international realities, and
- facilitate the achievement of sustainable development through pollution prevention and other voluntary initiatives.

Key Points of Concern

Conflicting Approaches

It is stated in the Government Response that the purpose of renewing CEPA is to contribute to the goal of sustainable development through pollution prevention and that the Act should be designed to bring about a shift to emphasize the anticipation and prevention of the creation of pollutants and waste. The concrete action that is offered to promote this shift includes a strong statement in both the Preamble and the Declaration to the Act with seven principles to guide future policies and programs. Pollution prevention planning is encouraged, and in some cases to be mandated; however, the Proposal fails to establish pollution prevention as the primary approach in a renewed CEPA. With respect to the seven principles, how does the Federal Government propose to commit and put these principles into practice in policies and programs when there continues to be a failure in federal provincial, territorial cooperation and collaboration in environmental management? And, Ministers cannot ignore that the lack of municipal integration into intergovernmental environmental management is increasingly worrisome.

On the other hand, the Government Response overwhelmingly favours a strengthened regulatory framework for the management of toxic substances with increased emphasis on regulation development, more enforcement including more stringent penalties for non-compliance and the introduction of citizen rights of action to encourage the use of civil remedies to achieve environmental protection goals.

Regulatory proposals outweigh proposals to implement a voluntary shift to pollution prevention planning. The Government Response is weak in its support for increased use of voluntary agreements, negotiated agreements, and other innovative partnerships as a working model for using pollution prevention to achieve environmental protection goals. This is looking to the past and disregarding core defects that have been identified with a prescriptive regulatory approach to controlling toxic substances; it overlooks the extent to which sound environmental policy can assist in encouraging innovation to build a more competitive economy.

There are documented studies that the "command-control" regulatory approach to environmental protection is outdated; it is too slow, too cumbersome to implement, too resource intensive and

.../4

expensive to administer and enforce. Since 1988, governments have increasingly used voluntary initiatives and other non-regulatory instruments to achieve environmental protection goals. Are these gains to be lost or to be built upon and strengthened? For example, too little is said in the Government Response about the environmental benefits that have, and will continue to be gained, through the voluntary Accelerated Reduction and Elimination of Toxics (ARET) program.

Federal Provincial Harmonization

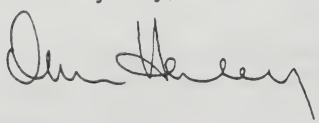
In the Government Response, there is a lack of emphasis on the need for increased government efforts in the CCME harmonization initiative as a necessary strategy to facilitate increased federal-provincial cooperation. The EQ Committee urges Ministers to proceed with diligence to complete its negotiations on the EMFA to produce a useful and implementable harmonization mechanism for environmental management.

Other Concerns of the EQ Committee

CMA is a broad horizontal association representing Canadian manufacturing and its members include companies from the resource sector, chemical producers and secondary manufacturing of all types. Member companies are large, medium and small. In preparing its comments on the proposals to renew CEPA, the EQ Committee has taken into account submissions prepared by the Canadian Chemical Producers Association, the Motor Vehicle Manufacturers' Association, the Canadian Petroleum Products Institute and the Mining Association. CMA's National EQ Committee supports the views of these sectoral Associations and has incorporated many of them. The EQ Committee's views are detailed in the attached submission.

CMA's National EQ Policy Group would like to participate in the next phase of the Federal Government's consultations to renew CEPA. We look forward to the opportunity to be involved.

Yours very truly,



Doreen C. Henley
Vice President
Government Relations and Environment

/cr

The National Environmental Quality Committee
of
The Canadian Manufacturers' Association

COMMENTS ON THE PROPOSALS in the Government Response to Renew The Canadian Environmental Protection Act (CEPA)

Chapter 1 - Guiding Principles for an Effective CEPA

Pollution Prevention

1.2

CMA supports the government's proposal that a strong statement be included in the Declaration to the *Act* to the effect that the purpose of CEPA is to contribute to the goal of sustainable development through pollution prevention. CMA further supports the proposed reference in the Preamble to pollution prevention as the priority approach to environmental protection. CMA supported the definition of pollution prevention during multistakeholder consultations on the development of the federal pollution prevention strategy but strongly recommended that the definition include a commitment to reuse and recycle (both on-site and off-site), to ensure consistency with the goal of achieving sustainable development. CMA recommends a reconsideration of the Government of Canada document, *Pollution Prevention, A federal strategy for action*, specifically that it should include off-site reuse and recycling in the definition of pollution prevention.

Ecosystem Approach and Biodiversity Principle

1.3

The CMA strongly supports incorporating the ecosystem approach into CEPA and recommends that the priority in this regard be the promotion and protection of human health.

1.4

The CMA agrees that the concept of Biodiversity should be promoted in the Preamble. It would be premature however, to include the definition of biodiversity in the Act until Canada has identified the scope of its obligations pursuant to the definition in the Convention.

Intergovernmental Cooperation

1.5

The CMA supports this recommendation but suggests that the obligation between governments to cooperate regarding environmental matters should be more strongly worded and should also include recognition of the increasing globalization of environmental issues and highlight the need for continued and increased global cooperation.

The CMA further recommends that the government ensure that their commitment to intergovernmental cooperation result in action. There must be a strong commitment at the federal level to move the Canadian Council of Ministers of the Environment (CCME) Environmental Management Framework Agreement (EMFA) forward and to have it finalized and implemented. It is also suggested that this commitment be included in the Preamble to CEPA.

Science and the Precautionary Principle

1.6 and 1.7

The CMA strongly supports the recognition within CEPA of the strong role that science must play in environmental decision-making. The CMA also supports the use of the United Nations Conference on Economic Development (UNCED, 1992) definition of the Precautionary Principle.

Economic Responsibility

1.8

The CMA supports including reference to economic responsibility in the Preamble and recommends that the wording in the preamble refer:

> to the interrelationship of economic and environmental considerations and acknowledge the role of such interrelationships as the benefit-cost approach to promote flexible environmental decision-making.

The CMA recommends that a re-examination be undertaken of the *Framework for Analyzing Public Policy Barriers to Sound Environmental Practices* which was developed by the Task Force on Economic Instruments and Disincentives to Sound Environmental Practices in 1994. CMA recommends that consideration be given to a revitalization of the Framework through a pilot project headed by Environment Canada with participation by selected federal departments. The focus would be to determine the usefulness of the Framework and its possible contribution to the promotion of sustainable development.

User/Producer Responsibility

1.9

The CMA does not support the inclusion of the term user/producer responsibility as a guiding principle of CEPA as there is currently no agreed upon definition of this term. Clarification is needed regarding to whom and how the concept of user/producer responsibility would apply prior to implementing such a concept. Producers and users have different information and abilities with respect to dealing with substances and materials. As producers have greater information and ability than users, users should not have the same responsibilities as producers. Further, CMA holds that the principle should be reworded as "producer/user" responsibility.

Environmental stewardship is a new concept which needs to be examined more carefully prior to its incorporation in a renewed CEPA. Regulation is premature at this time.

The CMA would be pleased to actively participate in discussions with government officials on the concept of producer/user responsibility. Because member companies use chemicals and other materials in their manufacturing processes, CMA believes they could provide valuable insight in any discussions regarding this concept.

Chapter 2 - Administration

Advisory Committees

2.1

The CMA recommends that if Advisory Committees are established, they must have a clearly-established agenda, objectives and goals. A mechanism must be established to ensure that the advice of these committees is given careful consideration by decision-makers. Where such advice is not followed, the Minister should be obligated to provide reasons.

Appointment and Duties

2.3

The CMA recommends that the Canadian Council of Ministers of the Environment be included among the Advisory Committees that are identified. As well, it is essential that Advisory Committees would be guided to follow the principles in the Toxic Substances Management Policy.

Equivalency and Administrative Agreements

The administration of CEPA should not become burdensome to those to whom it applies. It must be emphasized that there is a clear need for simplified processes and a "single window" approach to avoid overlap and duplication and to ensure that the limited resources of government and industry are used most effectively.

2.8

The CMA has the following concerns with regard to the government's proposals regarding accountability and public scrutiny in the preparation of administrative and equivalency agreements:

* The Canada Gazette is not readily available to the public;
* It must be ensured that the electronic registry is easily accessible to the public;
* The public must be educated to use these tools;
* 60 days comment period following publication may be too short depending on the scope of the agreement. In any case, the notice period should be reasonable.

The CMA further suggests that the proposed administrative and equivalency agreements be published on the Internet which is available at most libraries.

2.9

The CMA is concerned that the five year sun-setting period for administrative and equivalency agreements is too short to ensure consistency in terms of regulation. It is therefore recommended that a **review**, instead of sun-setting, be conducted at the end of a 5 year period to assess the effectiveness of any agreement. Sun-setting may be included but 10 years is recommended as the minimum and should be implemented only after a review has been undertaken. It may be that only sections of an agreement need to be sun-setted.

2.10

The CMA suggests that the requirement to report annually be extended to every 2 years and the requirement should be extended to include "harmonization efforts".

General Agreements for Environmental Management

2.12

The CMA is uncertain as to whether these agreements are the best way to achieve harmonization. A larger priority should be placed on completing and obtaining agreement on the CCME's draft EMFA. The CMA also suggests that the government

conduct a review of these agreements rather than sunset them every 5 years.

Economic Instruments

2.13

The use of economic instruments was recommended in The Report of the Standing Committee on Environment and Sustainable Development, *Its About Our Health*. The CMA would like to point out that the idea of using economic instruments has been promoted for 25 years and in the Task Force on Economic Instruments and Disincentives to Sound Environmental Practices report, *Economic Instruments and Disincentives to Sound Environmental Practices*, (1994) strong arguments were found to support their use. Despite all this, little concrete activity has resulted to guide in the setting up of a pilot(s) project on which an economic instrument is identified, applied and evaluated. The CMA therefore recommends the revitalization of the Task Force on Economic Instruments to identify concrete activity to evaluate the application of an economic instrument to an environmental problem.

At the same time, CMA believes that an economic instrument should only be developed and implemented where it is found to be the most cost effective option to address a particular environmental problem. Before any economic instrument is proposed, a thorough cost-benefit analysis should be conducted and the socio-economic, trade and competitiveness impacts weighed against the intended environmental protection objective.

In keeping with what was previously recommended in our comments on 1.8, the CMA recommends a re-examination of the *Framework for Analyzing Public Policy Barriers to Sound Environmental Practices* which was developed by the Task Force on Economic Instruments and Disincentives to Sound Environmental Practices in 1994. CMA recommends the revitalization of the Framework through a pilot project headed by Environment Canada which includes the participation of selected federal departments. The focus would be to determine the usefulness of the Framework and its possible contribution to the promotion of sustainable development.

2.16

Instead of the 7 year period recommended for further review of CEPA, the CMA recommends that the period for review be extended to 10 years in accordance with that provided under the *Bank Act*. It is further recommended that, at that time, the review should be structured to ensure its timely progression.

Cost Recovery

2.17

The CMA is concerned about this recommendation as well as other recommendations in the government response regarding cost recovery. The *Financial Administration Act* provides sufficient authority for the recovery of costs of services provided by the government. It is inappropriate and unnecessary to include provisions covering cost recovery within CEPA since it is already covered by existing federal government legislation. The CMA strongly recommends that these provisions not be included in CEPA.

If the government determines after careful analysis to include provisions for cost recovery, the CMA would recommend that such provisions take into account the CMA's concerns regarding the widespread imposition of user-fees by federal departments as outlined in a letter from Stephen Van Houten, President of CMA, to the President of the Treasury Board dated July 24, 1995. As well, we urge you to consider the points CMA believes should guide cost recovery measures. This letter is attached as Appendix A.

The CMA further recommends that the government, if it chooses to include provisions for cost-recovery within the Act, use more specific criteria than that the government is providing "service of a beneficial nature".

Chapter 3 - Public Participation

Access to Information by Public Registry

3.1
If a registry is to be established, the CMA supports option #3 which provides that a registry be created without enshrining its creation in law. The CMA recommends that implementation of the third option be delayed pending evaluation of the public registry provisions under Ontario's *Environmental Bill of Rights* (EBR).

The Ontario EBR experience has been found to delay the implementation of projects, including preventative or proactive environmental measures, even without intervention, to be expensive both to industry and government and to be ineffective. Information has been received, that under the Ontario experience with EBR, over 2000 instruments have been placed on the registry and less than 2% have received comments. Given this experience, it is not clear that a federal public registry would be an effective use of limited government resources.

The CMA further recommends that publication in the Canada Gazette be retained for 10 years.

3.3

The CMA does not agree with this recommendation. It is absolutely essential that cost recovery measures not be applied against users on a public information system. Prior to such a system being implemented, analysis should be provided regarding the effectiveness and efficiency of the Ontario registry system established under the *Environmental Bill of Rights*.

The *Financial Administration Act* should be used and government policy and the Ministerial discretion option should include guidelines for the Minister of the Environment. The cost recovery guidelines is not a matter which should be related to a renewal of CEPA.

The Right to Sue

3.9

The CMA reasserts the recommendation expressed in its letter of September 8, 1995 to the then Minister of the Environment in this regard. Specifically, the letter provided that

> There is no need for the Federal government to create new civil causes of action; these are traditionally a provincial matter. There is currently a range of common law actions that adequately protect anyone who suffers property, personal or pecuniary loss. Moreover, CEPA currently provides a civil cause of action in Section 136, and provides that compensation for damages can be ordered where an offender is convicted in Section 131.
>
> Protection of the environment should remain in the control of the government which is politically responsible to the electorate and not be shifted to the courts at the instigation of the special interest groups. Citizen suits of the type described in recommendations 120 and 121 do not exist in Ontario or the United States and have a significant potential for abuse.

A complete copy of this letter is attached as Appendix B.

Chapter 4 - Ecosystem Science and National Norms

Authority for the Minister to Require Submission of Information for Research and Publication

4.1
The CMA recommends that this monitoring and research be done in coordination/collaboration with the provinces and territories and Aboriginal groups in order to share information and communicate on a broad basis.

It is further recommended that, within a renewed CEPA, the government should include CCME phraseology encouraging a process of "working cooperatively in the planning and delivery of monitoring programs of national interest".

4.2

The CMA is concerned about the broadened information-gathering powers being proposed for the Minister in this recommendation. The submission of data in one's possession or control should be voluntary rather than mandatory. A mandatory requirement would operate as a disincentive to companies to collect information as the requirement to provide information in companies' possession or control could be extremely costly.

The existing language in section 15 of CEPA is sufficiently broad to enable the Minister to obtain any required information to assess toxicity. The CMA recommends that any additional powers to collect information should be only required in very specific circumstances. The cost of complying with such a provision would be extremely onerous to business. The government should therefore be required to justify any additional requests on the basis that the information is necessary, cannot otherwise be obtained, and that the benefit of the information exceeds the cost of collection to business.

If the government decides to implement the proposal in recommendation 4.2, the CMA suggests that the list of data covered by recommendation 4.2 be an exhaustive one. Further, it is suggested that paragraph 4.2(a) information be used only for statistical purposes. As well, it is recommended that Environment Canada consult with and use the expertise of Statistics Canada with regard to data collection and publication.

The reduction of funding to Statistics Canada may need to be re-examined to compensate for depleting "Green Plan" money.

The CMA recommends that care be taken to ensure that federal-provincial collection of required data be coordinated to eliminate overlap and duplication. The sharing of information will be necessary but poses confidentiality issues that would need careful analysis.

National Pollutant Release Inventory (NPRI)

4.3

The CMA supports the proposal to enshrine the NPRI in CEPA using the general power for the gathering of information using the multi-stakeholder consultative process. The CMA supports a streamlined and harmonized approach to emissions inventory requirements which would fulfil federal and provincial needs while minimizing the reporting burden on industry. For example, CMA recommends an electronic reporting database which would include Accelerated Reduction/Elimination of Toxics (ARET) listed substances together with the NPRI listed substances with the exception that reporting on ARET substances should continue to be voluntary.

Requests for Confidentiality

4.4, 4.5, 4.6

The CMA strongly disagrees that claims for confidentiality should be substantiated up front. It is critical that the submission of information to substantiate confidentiality claims is required only when such claims are challenged and not to require substantiation up front automatically when a claim is made.

The procedure recommended by the government appears to be based on the WHMIS model which, through experience, has proven to be neither cost-effective or efficient.

The CMA strongly advises that this recommendation not be implemented.

4.7

The CMA recommends that (b) be reworded to read as follows:

> the prevention of pollution including recycling, reusing, treating, storing, or disposing of substances or reducing releases;

Chapter 5 - Enforcement

Administrative Monetary Penalties and Negotiated Settlements

5.1

The CMA recommends that if the government includes provisions in CEPA to provide for administrative monetary penalties or negotiated settlements, guidelines be created to govern their use to promote and encourage compliance with the Act and regulations.

Ticketing

5.6

The CMA does not agree with the incorporation of the use of ticketing into CEPA because it is unclear what level of fines would be payable, what offences would be ticketable and what would be the government enforcement policy on the use of ticketing.

CEPA Investigator

5.9

The CMA questions the necessity to establish a new category of Investigator because such a creation would be costly and it implies a greater emphasis on enforcement rather than prevention and/or compliance.

Guidelines for Sentencing

5.12

The CMA recommends that these criteria be included in a compliance/enforcement policy and that this policy be included as a schedule to CEPA. In addition, a draft compliance and enforcement policy should be tabled with, and reviewed at the same time as, draft legislation is put forward for consultation.

Court Ordered Apology

5.13

The CMA does not support the inclusion of a provision in CEPA directing the courts to order an accused to publish an apology for a breach of the statute or regulation.

Environmental Fund

5.14

The CMA agrees with the analysis in the Government Response that it would be inappropriate to provide for funding government environmental programs through a fund that would be derived from fines imposed by the courts. Given this, the CMA does not believe that it is appropriate for Recommendation 5.14 to specifically mention Minister of the Environment as being a possible designate to act as a trustee that the courts could appoint to administer the awards imposed by the courts for CEPA violations. The designation of trustee should be left to the discretion of the courts.

Chapter 6 - Pollution Prevention

Pollution Prevention Planning

6.1

The CMA recommends that:

- These plans be limited to areas where government would have significant concerns and decisions to intervene should be based on previously set criteria which set out the circumstances when such an intervention is necessary and warranted.

- Off-site reuse and recycling should be included in the definition of pollution prevention.

Pollution Prevention Plans for Infractions of CEPA

6.3

To clarify the implications of infractions of CEPA regulations, findings of liability under the administrative monetary penalty system and non-conformity with pollution prevention plans, CMA recommends that the federal government develop and table a draft compliance and enforcement policy for discussion at the same time as it tables proposed changes to renew the Act.

Submission of Pollution Prevention Plans

6.5

The CMA suggests that the submission of pollution prevention plans is more effective when flexibility is provided and the specifics are left up to the individual company. The requirement to submit a Pollution Prevention Plan should take into account the model plan in the guideline and, in all cases, the company's individual circumstances including provision to protect confidential business information.

Tracking of Progress on Pollution Prevention

6.7

The CMA supports the harmonization of lists of substances but recommends that the reporting of substances that are not on the NPRI List of Substances be voluntary.

Pollution Prevention Targets and Schedules

6.8

The CMA suggests that a proposal to challenge Canadian companies to strive to achieve reduction targets such as those set out by the *Business Council for Sustainable Development* should not be dealt with in legislation and in this case, CEPA.

Technology Development and Transfer

6.9

The CMA recommends that 6.9 and 6.10 be aligned to ensure that they are not duplicative or onerous in terms of reporting. The government must also consider similar requirements imposed under its proposals in item 4.2.

6.10 **Pollution Prevention Clearinghouse**

It is our understanding that the Great Lakes Pollution Prevention Centre and the Commission for Environmental Cooperation will act as pollution prevention clearinghouses. If either group does not offer a service such as the United States Vendor Information System for Innovative Treatment Technology (VISITT) data base for waste remediation technology sources developed under the U.S. Environmental Protection Agency (Technology Innovation Office) that it be examined for possible application in Canada with the caveat, that changes may be needed to ensure it fits with Canadian circumstances.

Prevention, Preparedness, Response and Recovery Framework

6.12

The CMA disagrees with this recommendation except with respect to federal sites. Responding to environmental emergencies should be a provincial concern since, in most cases, there will not be a national responsibility. The federal government should not duplicate provincial requirements.

Site Identification and Registration

6.16

That risk is directly proportional to the quantity of substance stored is often not the case. Risk may be increased if smaller but more frequent shipments of substances were to become the norm. Other factors such as the quality of storage systems, management techniques and emergency controls are also important in determining risk. These factors

must be considered if this recommendation were to proceed.

The CMA further recommends that if the federal government proceeds with the provisions of this recommendation, measures must be taken to ensure that the municipal role is adequately recognized.

Reporting of Spills, Leaks and Other such Incidents

6.17

The CMA recommends that these discussions include municipalities. Such discussions must take into account the CCME EMFA proposal as well.

Recovery of Cost of Damages from Spills, Leaks and Other such Incidents

6.18

CMA does not take objection to the right of the Government of Canada and other persons to recover costs and expenses actually incurred as long as the measures taken are reasonable, as set out in the *Canada Shipping Act*. However, the right to recovery should only be against the polluter, the person who is responsible for the release. There should be no expanded liability to owners or others who were not directly responsible nor incorporation of joint and several liability provisions.

Chapter 7 - Biotechnology

Manufacturers increasingly consider bio-remediation to be an effective method of cleaning up contaminated sites. In bio-remediation projects, site-specific solutions are required. For example, a biologically-modified organism would be needed to assimilate a certain type of contamination. If each new organism were to be subject to notification requirements, the use of bio-remediation would be seriously hindered. CMA urges the Government to view bio-remediation as a special case of biotechnology and consider including notification requirements for classes of organisms, instead of notification for an individual organism.

Chapter 8 - Controlling Pollution and Wastes

International Air Pollution

8.1

CMA believes that the federal government should coordinate the management of international air pollution issues with the provinces. As well, CMA supports the

continued use of mechanisms that have been developed to involve stakeholders in these discussions such as the National Air Issues Coordinating Committee (NAICC) established under the CCME.

Definition of Waste

8.12

The CMA supports the Canadian Government's current effort to establish a definition to distinguish among wastes for final disposal, recyclable materials and products. CMA strongly recommends in addition that these distinctions be harmonized across jurisdictions.

Responsibility of Users and Producers

8.13

The CMA is unclear as to what is being proposed. It is inappropriate to legislate product stewardship requirements into CEPA because such inclusion would lead to unwarranted government intervention into the marketplace. No other OECD country has adopted such an approach. Instead, the focus should be on Pollution Prevention with product stewardship as a subset to assist in achieving the goal of sustainable development. The field of life cycle assessment is still too undeveloped.

Hazardous Wastes - New Requirement - Reduce the Quantity of Hazardous Waste Being Exported For Disposal

8.15

The CMA believes that this recommendation should be deleted. The general guiding principle of Canadian self-support in waste disposal is misguided and does not make economic or environmental sense. Regional disposal between Canada and the U.S. is provided for under Canada/US agreements and supported under Chapter 20 of Agenda 21.

Recommendation 8.15 supports the use of only Canadian facilities which may not necessarily be the best. Further, it appears to be a protectionist trade policy which has implications for free international trade.

Interprovincial/Territorial Movement of Hazardous Wastes

8.20
The need for Environment Canada to take over these responsibilities from Transport Canada has not been established.

Costs and Liability

8.21 & 8.22

The CMA recommends that cost recovery not apply to this area. It is further recommended that, in the absence of evidence which indicates a need for regulation in this area, it is unreasonable that the federal government should become involved in regulating the movement of waste or in controlling the import or export of solid non-hazardous waste.

Chapter 9 - Controlling Toxic Substances

9.1

The CMA supports the emphasis on the application of the Toxic Substances Management Policy and principles of risk assessment as the appropriate basis for controlling toxic substances under CEPA.

9.9

The CMA recommends that:

- Data on substances from international sources should be used, whenever available and deemed reliable by Canadian standards, to avoid duplicating the data collection in Canada.
- Cost and competitiveness implications should be taken into account when determining the scope of testing requirements and data collection that the Minister may require.
- The legislation should ensure that, in exercising the powers to carry out additional testing, where necessary to conduct PSL assessments, that there would be an equitable sharing of the costs related to these activities among affected interests.

April 23, 1996

R.R. #1
Carleton Place, On.
K7C 3P1

March 20, 1996

The Hon. Sergio Marchi
Minister of the Environment
Terrassess de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H3

Dear Minister:

I am writing to you regarding the government's proposals for the regulation of biotechnology contained in its December 1995 response (*Environmental Protection Legislation Designed for the Future*) to the June 1995 report of the House of Commons Standing Committee on Environment and Sustainable Development (*It's About Our Health!*). I am deeply concerned that the government's proposal would significantly weaken the provisions of the existing Act as they apply to biotechnology. The minimum standards for notification and assessment of toxicity for all products of biotechnology currently provided for by CEPA would be eliminated.

This proposal is inconsistent with the intent of the Standing Committee's recommendations regarding the regulation of biotechnology under CEPA, and could endanger the health, safety and environment of Canadians. It must be rejected.

Rather, consistent with the intent of the Standing Committee's recommendations, a new biotechnology part should be established under the CEPA. The new CEPA biotechnology part should:

- apply to all products of biotechnology which may enter the environment, including those which the government currently proposes to regulate under other Acts, such as the *Seeds Act*, the *Pest Control Products Act*, and the *Fertilizers Act*;

- establish requirements for the assessment of biotechnology products in terms of their:

  - potential immediate or long-term, direct or indirect effects on human life and health, the environment, and biodiversity, including cumulative impacts;
  - potential effectiveness of the products for their intended purposes; and

- the availability of alternative means of achieving products purposes which may present lower potential for harm to the environment and human health;

- provide for public participation in decision-making regarding biotechnology, including:

  - public notice of major decisions regarding biotechnology products;
  - public notice of proposed field tests of biotechnology products;
  - opportunities to appeal government decisions regarding biotechnology products, including the approval of field tests; and
  - enhanced access to information regarding products of biotechnology;

- establish a full-cost recovery, user-pay system for approvals of biotechnology products; and

- provide for the establishment of a database of environmental releases of products of biotechnology in Canada.

More broadly, the government should:

- take a leadership role in environmental protection by setting strong environmental standards;

- ban or phase out the use and release of chemicals that persist in the environment and build up in wildlife and humans;

- introduce an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed, and the right to sue polluters who break the law; and

- inform the Canadian public who is releasing toxic pollutants into the environment, including substances sent off-site for recycling or incineration.

Sincerely,

Ann Cleary

Ann Cleary

ENVIRONMENTAL MINING COUNCIL OF BRITISH COLUMBIA
1216 Broad Street, Victoria, BC, V8W 2A5
phone: 604-384-2686 fax: 604-384-2620

The Right Honourable Jean Chretien, Prime Minister,
Langevin Block, 80 Wellington St.,
Ottawa, ON K1A 0A2

The Honourable Sergio Marchi,
Minister of the Environment,
Terrasses de la Chaudiere, 10 Wellington St.,
Hull, PQ, K1A 0H3

March 21, 1996

RE: Government Response to Review of Canadian Environmental Protection Act

Dear Prime Minister Chretien and Minister Marchi,

I am writing to you to express the concerns of the Environmental Mining Council of BC over the government's recent response to the Standing Committee on Environment and Sustainable Development's report entitled "*It's About Our Health: Towards Pollution Prevention.*"

Our organization is a coalition of national, provincial and local environmental groups that have been involved in a variety of toxins issues and environmental health issues. We sit on Ministerial Advisory Councils on Mining at both the federal and provincial levels and have worked co-operatively with government and industry through several processes (including Aquamin, and the Whitehorse Mining Initiative) relating to the impacts of toxins on the environment.

Through our work at the local, national and international level the link between environmental, social and economic health has become very clear. Clearly, Canada's ability to maintain and improve the quality of our water, air, soil and biotic resources is fundamental to our ecological, social and economic health. It equally clear that the only way to ensure that Canada, as a whole, achieves this goal of a healthy environment and a sustainable economic base, is for the federal government to take a strong leadership role in environmental protection through the setting of strong, effective environmental standards.

Companies we have worked through the various policy fora have said, time and time again, "let us know the rules and we will meet them". They emphasize the need for clear, consistent standards. None of the companies we have spoken with are willing to publicly admit a desire or need for lower environmental standards. We endorse the use of CEPA to help lay out those clear, strong standards.

The emphasis of these kinds of standards must be to *prevent* the use and generation of pollutants rather than controlling or cleaning them up after the fact. As a basic principle of environmental health protection, the use and release of chemicals that bioaccumulate should be banned or phased-out; the long term human and economic cost of these outdated substances is simply too high. CEPA has the ability achieve this proactive approach, if it is allowed to meet its real purpose.

In order to safeguard the quality of life across Canada, and to encourage excellence in environmentally responsible business practices, we strongly endorse the call for an environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters that break the law. Responsible businesses have nothing to fear from such a law.

Fundamental to the exercising of rights for a healthy environment is the right to know who is releasing which pollutants into the environment. Comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration is essential for meaningful public protection of the environment.

We strongly encourage you and your government to act fully upon the recommendations made by Standing Committee on Environment and Sustainable Development. The government response to date has not begun to do justice to the many concerns raised about effective pollution prevention by a broad range of Canadians. You can rest assured that these issues are of fundamental importance to Canadian voters of all walks of life. Your responsive treatment of effective pollution prevention measures, as a part of our move toward a sustainable society will be a central measure of the success of your government.

Respectfully,

Alan Young

Alan Young
Executive Director
for the Environmental Mining Council of BC

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

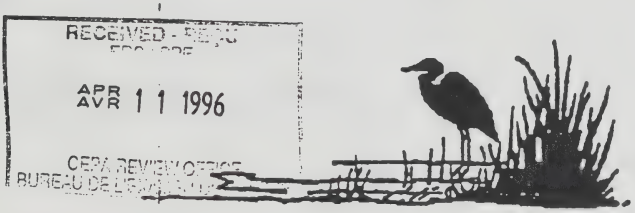
IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: RANDALL ST. GODARD

Address: #145 - 6822 6200 McKay Ave
BURNABY, BC
V5H 4M9

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.



I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: Lorna J. Hancock

Address: 5338 EWART ST
Burnaby BC
V5J 2W4

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report.

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: HEALTH ACTION NETWORK SOCIETY

Address: #202 - 5262 RUMBLE ST

BURNABY BC V5J 1N9

ph (604) 435-0512 Fx (604) 435-1561

Representing 4200 members.

INUIT TAPIRIIKSAT KANATAMI
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INUIT TAPIRISAT OF CANADA

Honourable Sergio Marchi
Minister of the Environment
House of Commons
Ottawa, ON

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ENVIRONNEMENT CANADA

Honourable David Dingwall
Minister of Health
House of Commons
Ottawa, ON

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0-1025-31

March 29, 1996

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Dear Minister Marchi and Minister Dingwall,

I am writing to respond the Government's Response to the report by the Standing Committee on Environment and Sustainable Development entitled "Its About Our Health! Towards Pollution Prevention". I am pleased that the federal government recognizes the need for cooperation and meaningful participation of Aboriginal Peoples throughout the response document. Clearly, the federal government will have to work out equivalency or administrative agreements with each land claims organization, the Inuvialuit Regional Corporation, Nunavut Tunngavik Inc., Makivik Corporation and the Labrador Inuit Association who are still in the process of negotiation a land claims agreement.

The proposed inclusion of Aboriginal representation on the CEPA Advisory Committee is welcomed by the Inuit organizations. However, we must be given some time and resources to consult fully on what organization or organizations should participate. The roles of this Advisory Committee also needs to be clarified, and it should not take the place of bilateral agreements or arrangements with regional Inuit organizations.

Suite 510, 170 Laurier Ave. W., Ottawa, Ontario K1P 5V5 Ph: (613) 238-8181 Fax: (613) 234-1991

With regard to the pollution prevention provisions outlined in the Government Response, we feel that these are not strong enough. There is no clear commitment to phase out persistent toxic substances based on their inherently dangerous properties, like persistence and bioaccumulation. The process for declaring substances to be "toxic" under CEPA is a long and slow process. As you may know, the discoveries of the past ten years of trace contaminants in the Arctic, especially of persistent organic pollutants, is of great concern to Inuit. These contaminants accumulate and persist in the fat of marine mammals in the Arctic - foods that we rely on for out physical and cultural health. The Health Canada Assessment of toxaphene and chlordane in beluga and seal fat and muktuq in December 1995 made us realize the need to phase out these contaminants. Although the long term health risks are unknown, and we know that the benefits of continuing to eat these foods outweighs the known risks, Inuit from across the Arctic have made it clear that the presence of these contaminants in the Arctic is unacceptable.
The commitment to pollution prevention planning is also not strong enough in the government response - this should be mandatory and not left solely to the Minister's discretion.

We have learned from our active involvement in the Northern Contaminants Program of the Arctic Environmental Strategy that many of the contaminants that we find in the Arctic are carried by long range transboundary air currents. That is why we believe that an amended CEPA should strengthen its provisions regarding International Air Pollution. If Canada does not make strong commitments on this front, it will be hard to convince other countries to sign on to a Protocol for the Long Range Transport of Airborne Pollutants (UN-ECE LRTAP Convention).

We support the proposals of the federal government on ocean dumping, but it is our position that the fees/fines should reflect the full cost of remediation and compensation, not just a sliding scale to reflect the nature and quantity of wastes being dumped. In addition, we consider that a 10 day notification and objection period is too short for public submissions. We also had recommended that Inuit organizations should have the same representation and role on the Regional Ocean Dumping Action Committee (RODAC) as on claims-mandated co-management bodies, with respect to Arctic Ocean and Labrador Sea ocean dumping applications.

The government is also reviewing the appropriateness of including a non-derogation clause, to ensure that Aboriginal and treaty rights are not affected. This type of provision should be more specific to recognize the statutory requirements of the settled land claims, which take precedence over all other legislation. Surely it is possible to amend legislation in such a way that it takes full advantage of existing workable procedures without compromising the goals of Canada or those of claimant groups.

In closing I would like to re-emphasize the need for the federal government to work in partnership with Inuit land claims and regional organizations in the amendment and implementation of CEPA. We know that pollution from outside our Arctic homelands can affect our environment and health. Therefore, we hope that the Canadian government will continue to be an international leader in environmental protection.

Yours sincerely,

Rosemarie Kuptana
President

cc: Honourable Ron Irwin, Minister of Indian Affairs and Northern Development
Charles Caccia, Chair of the Standing Committee on Environment and Sustainable Development.
Members of the Standing Committee on Environment and Sustainable Development
ITC Board of Directors

NATIONAL AGRICULTURE ENVIRONMENT COMMITTEE

COMITÉ NATIONAL DE L'ENVIRONNEMENT AGRICOLE

March 29, 1996

Honourable Sergio Marchi
Minister of Environment
House of Commons
Ottawa, Ontario
K1A 06C

Dear Minister Marchi:

The National Agriculture Environment Committee (NAEC) provides a forum for farm leaders to develop and implement proactive strategies and is dedicated to working on issues of environment and agriculture. NAEC has been tracking and participating in the consultations on the revision of the *Canadian Environmental Protection Act*. Below are a few comments on the "CEPA Review: The Government Response-- Environmental Protection Legislation Designed for the Future-- A Renewed CEPA: A Proposal."

NAEC has been promoting the concept of **sustainable development** and is pleased to see that the government has agreed to enfold this into CEPA. We believe that actions including how to manage toxic substances cannot be done in a vacuum, but in a paradigm that includes economics, the needs of local communities and the environment.

We are interested in seeing an act that has a holistic and coordinated approach to environmental protection as the name implies. We can cite examples where decisions made in isolation could result in harming rather than protecting the environment in the long run. The addition of the **ecosystem approach** goes some way towards addressing this; but there still needs to be some rethinking of how decisions are made about substances related to how and where they are used and what (if any) restrictions or prohibitions are placed. Decisions made on substances without full consideration of the environment, the economy and our communities; including other products and how and where they would be used can be detrimental.

One of our major comments on the response is the chapter on biotechnology (chapter 7). We support the proposal put forward by government in regard to how biotechnology products would be handled. We believe that it is important that biotechnology products be handled by the same groups and agencies that handle and are familiar with non-biotechnology type products. We feel that this is important to ensure

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Tel.: 613-237-5833 Fax: 613-236-5749

consistency of review and policy development. For agriculture this is particularly important. Therefore we support section 7.4 but would like more information on the proposed process (new part, the safety net, the approval process by the Governor in Council) and of course be involved in all consultations on how this would work.

Regulators in Agriculture and Agri-Food Canada and Health Canada have extensive experience in regulating biotechnology products and related traditional products. Fertilizers, pest control agents, plants, animal products and issues and products dealing with plant and animal protection should all be dealt with fully under the appropriate act (e.g., *Fertilizers, Pest Control Product, Seeds,* etc.). The best use of resources, as proposed, is to have the organization familiar with the issues, the people and with direct and close access to those involved in the traditional regulatory process responsible for the regulation of biotechnology products. Also, it is important that the organizations responsible for regulations have close and direct access to producers and are committed to involving producers in the process.

We reserve our comments re the cost recovery and biotechnology. This may affect the input costs of the products which farmers may be required to use and which for the most part farmers are not able to pass on to consumers. We agree that CEPA should retain a safety net for those areas not covered by other acts.

We applaud the approach in the government response. We feel that the proposal made by the government is the best approach rather than CEPA having the full responsibility. We call for practicality and effectiveness, which you have obviously also seen as the case. We feel that the Canadian public has been and will continue to be well served by the regulatory team in Agriculture and Agri-Food Canada and Health Canada. They have been for years responsible environmentally and can, we believe, continue to take on this role. We have heard the criticism and the comment that Agriculture and Agri-Food Canada cannot simultaneously play the role of promoter and regulator of biotechnology products, and therefore the responsibility should be transferred to other non-promotional agencies in government. All departments are looking into the potential for new products and innovation. The government response acknowledges that Environment Canada would indeed be looking at biotechnology products for new tools for pollution prevention and cleanup. This also would be promotion and regulation in the same department; how would this differ from Agriculture and Health? In fact, the roles of the Research Branch and the Food Production and Inspection in Agriculture are well described and separated and have been for years and should not lead to concerns as to the professional and careful attention to health, safety and environmental assessments of new products of biotechnology.

We will watch with interest the development of the connections between the biodiversity convention and the so called user/producer responsibility and will comment on the details of these at a later date.

We note the inclusion of the discussion of **economic instruments** as a method of dealing with environmental problems and also cost recovery. We would like to be involved in the analyses and development of these concepts as they apply to CEPA.

We are fully in support of the use of **non-regulatory approaches** to environmental protection. The farm community has been and continues to be quite active in holistic planning and determining the issues and putting in place solutions such as self assessment guides for farmers, codes of practice, guidelines and best management practices, as well as programs and independent actions on issues such as permanent cover, riparian management, no-till farming for example.

The **pollution prevention** section needs to be clarified It is hard to determine in all cases where a farm or an on-farm production unit would fit into the discussions. In most cases, because farmers are consumers of products; they would not be eligible for the proposed pollution planning as described under the plans for CEPA toxic substance, however, farms are specifically mentioned under the more general heading of pollution prevention planning. We would like this clarified should it appear in the revised bill.

Relative to the public participation, we as stakeholders are interested in consultations on actions. We will follow with interest the proposal for the expansion of public participation rights.

We thank you for the opportunity to comment on the response. Please keep us informed of public consultations on CEPA and of the comments received and next steps. You should contact our office with any information about consultations and next steps.

Sincerely,

Alan Ransom
Chair

cc. R. Goodale
The CEPA Office

TUNNGAVIK

Qikiqtaaluk
Arctic Bay
Broughton Island
Cape Dorset
Clyde River
Grise Fiord
Hall Beach
Igloolik
Iqaluit
Kimmirut
Pangnirtung
Pond Inlet
Resolute Bay
Sanikiluaq

Kivalliq
Arviat
Baker Lake
Chesterfield Inlet
Coral Harbour
Rankin Inlet
Repulse Bay
Whale Cove

Kitikmeot
Cambridge Bay
Kugluktuk
Gjoa Haven
Pelly Bay
Taloyoak

12 April 1996

Honourable Sergio Marchi
Minister of the Environment
House of Commons
Room 509-S Centre Block
Ottawa, ON K1A 0A6

Dear Minister Marchi:

Re: The Government Response to the Report of the Standing Committee on Environment and Sustainable Development on a reviewed CEPA: *It's About Our Health! Towards Pollution Prevention*

Set forth below is Nunavut Tunngavik Incorporated's (NTI) preliminary comments on the Government's Response to the report of the Standing Committee on Environment and Sustainable Development entitled "*It's About Our Health! Toward Pollution Prevention. CEPA Revisited.*"

INTRODUCTION

NTI is a not-for-profit corporation created after the ratification of the *Nunavut Land Claims Agreement* (the *Nunavut Agreement*) as the successor to Tungavik Federation of Nunavut, which negotiated the *Nunavut Agreement* on behalf of the Inuit of Nunavut. NTI was established primarily to be the Inuit party to implement the *Nunavut Agreement*, to ensure that the rights and benefits flowing to Inuit through this and any other land claims agreements are secured and defended, and generally to represent the Inuit of Nunavut and advance their rights and benefits as an aboriginal people.

NTI represents the 19,000 Inuit of Nunavut, which includes the lands, waters and marine areas of the Baffin, Kitikmeot and Kivalliq Regions -- most of the central and eastern Arctic. The vast majority of Inuit live near marine areas and are dependent on marine life and other Arctic mammals for sustenance and livelihood, and for cultural, social and spiritual well-being. The well-being of Arctic ecosystems is critical to the physical and cultural survival of the Inuit.

1041, X0E 0C0, (403) 983-2517, (403) 983-2723
P.O. Box 1041, Cambridge Bay, NT X0E 0C0

The Nunavut Settlement Area and Nunavut Territory

The Nunavut Settlement Area (NSA) is the area to which Nunavut Inuit have asserted aboriginal title based on their traditional use and occupancy of lands, waters and land-fast ice and the area to which most of the rights in the *Nunavut Agreement* apply. In exchange for the specific rights and benefits in the *Nunavut Agreement*, the Inuit of Nunavut surrendered their aboriginal rights in and to lands and waters anywhere within Canada and adjacent offshore areas within Canadian jurisdiction.

The boundaries of the NSA on the east coast of Baffin Island extend to the 12 mile territorial limit. In addition, certain specific rights and benefits in the *Nunavut Agreement* extend beyond the NSA, specifically within the Outer Land Fast Ice Zone, and Zones I and II, which generally extend from the 12 mile limit off Baffin Island to the extent of Canada's jurisdiction and the waters of James Bay, Hudson Bay and Hudson Strait.

Inuit have title to 355, 857 square kilometres of lands in the NSA, including 37,872 square kilometres of land with mineral rights. As landowners, Inuit currently have surface and subsurface land management regimes in place pursuant to which land use activities on Inuit Owned Lands are permitted, inspection and monitoring are performed and reporting and other requirements are in place.

Nunavut Territory will be established in April 1999 pursuant to the *Nunavut Act*. The eastern boundaries of Nunavut Territory are co-extensive with the existing boundaries of the Northwest Territories and, therefore, extend beyond the boundaries of the NSA. Specifically, the eastern boundary of Nunavut Territory will include all that part of Canada north of 60 which is not part of Quebec, including the islands of Hudson, James and Ungava Bays not within other provinces.

An Integrated Nunavut Resource Management System

The *Nunavut Agreement* provides for the establishment, by July 1996, of a Nunavut Planning Commission (NPC), Nunavut Impact Review Board (NIRB) and Nunavut Water Board (NWB). These are co-management bodies appointed by Government and Inuit organizations, which have authority, respectively, for land use planning, environmental and social impact assessment and water use in the NSA and, with respect to the former two Boards, the Outer Land Fast Ice Zone, in accordance with the terms of the *Nunavut Agreement*. The Nunavut Wildlife Management Board (NWMB) has already been established under the *Nunavut Agreement* to regulate wildlife management in the NSA and Outer Land Fast Ice Zone. The NIRB, NWB,

NPC and NWMB also may jointly form a Nunavut Marine Council to make recommendations to Government regarding decision-making that affects marine areas.

Lack of Arctic Environmental Standards

In recent years, Inuit have become aware that their lands and waters are experiencing high levels of toxic contamination from the industrial and agricultural world. Air and ocean currents and northern flowing rivers are carrying toxics to the Arctic, where they are settling in the water, plants, animals and in the people of the North. In particular, the air is affected, as is evident from the hole in the ozone layer over the Canadian Arctic and from the yellow haze of pollution that can be seen on clear days on Baffin Island. A 1994 Health Canada report indicates that as a result of atmospheric loading, six tonnes of PCBs land in the Arctic per year, compared with 1.7 tonnes in the southern Great Lakes. The Arctic Environmental Strategy Action Plan reports that more than 800 waste sites exist across the North as a result of past development activity. DEW Line sites -- many near communities -- are repositories for PCBs, radioactive material, explosives, flammable liquids including paints and industrial solvents and so on, most of which, under current plans, will remain there.

In the face of increasing contamination, Nunavut Inuit have had repeated reminders of the general dearth of federal environmental regulation in Nunavut. Inuit have demanded that Government more effectively control the activities of developers operating on Crown lands in Nunavut only to be told that the Department of Indian and Northern Affairs (DIAND) is bound by antiquated permits allowing, for example, wholesale burial of debris without serious evaluation of frost jacking conditions. There are no air regulations which prevent developers in the Arctic from burning at will mass quantities of waste oil, paints, etc. Inuit have requested the characterization and risk assessment of buried hazardous waste in dumps at DEW Line sites across the Arctic but have been advised by the Department of National Defence that this is not within the clean-up protocol agreed to by Environment Canada and DIAND.

As a result, NTI welcomes the Government's decision to create a more effective CEPA. We do, however, have concerns in several areas. Our specific comments and concerns are set forth below.

DISCUSSION

I. The Arctic - A Special Case

As a general matter, NTI is disappointed that, in contrast to the Standing Committee Report, there is no section on the Arctic in the Government Response. The context of specific recommendations relative to the uniqueness of the Arctic is, therefore, lost. For example, the Government Response discusses the need for hazardous substance control mechanisms in Canada, and rightfully so. If, however, federal legislation fails to recognize regional environmental differences and no distinction is made between appropriate regulatory control of a substance in southern Canada and in the Arctic, than the effectiveness of the "one law approach" will be diminished. Given the unique characteristics of the Arctic environment (short food chains and small webs), it is critical to discuss and adopt effective measures in a renewed CEPA for distinct regions of Canada.

The Standing Committee recognized the importance of distinguishing the Arctic from other regions of Canada. As discussed in more detail below, in the Government Response, this has been lost.

A. Hazardous Substances

Some substances that may be considered moderately hazardous, and in need of some regulatory control in the south, may be more hazardous (inherently toxic), more persistent, and have a greater bio-accumulative effect in the Arctic. By the same token, the damage done to plant, animal and human life by hazardous substances released into the environment in the Arctic is exponentially greater than in the South given these factors and the increased reliance on country food by Inuit. The Government Response, however, fails to recognize the need for distinct treatment for hazardous substances in the Arctic.

In addition, although purporting to be a renewed approach, the Government Response suffers from the age old problem of dealing with hazardous substance movement after its creation and/or use in a region. NTI proposes instead that a renewed CEPA address the movement of hazardous substances **into** the Arctic in order to minimize, to the extent possible, the need to deal with such materials once in the Arctic.

The Standing Committee has recommended that discussions be initiated with the provincial and territorial governments to develop a national, single window system for the registration of all sites containing hazardous substances in quantities exceeding

prescribed thresholds (Standing Committee at 161, Recommendation 89), a recommendation endorsed by Government (Government Response at 49, proposal 6.16). NTI strongly supports this long-overdue initiative. NTI further recommends that the registration of hazardous substances entering the Arctic be examined as a unique case, and that provision for the regulation and appropriate restriction of hazardous substances entering the North be considered. Discussions on hazardous substance registration affecting Nunavut should include Nunavut Inuit representation in view of the fact that the Nunavut Government will not be established until 1999.

B. Hazardous Waste Disposal

Hazardous substance identification/registration, discussed above, and hazardous waste disposal are matters of urgency in Nunavut given the number of contaminated sites presently being dealt with and the outdated but pervasive approach of industry and government to either bury or burn hazardous materials in the Arctic. "Bury or burn" solutions are unacceptable to NTI, particularly since they are virtually the only two options ever considered for the Arctic. For example, the Department of National Defence has decided, with the concurrence of Environment Canada and DIAND, to bury all PCB-contaminated soils and many other potentially hazardous materials, as well as all non-hazardous materials, at existing DEW Line sites. The rationale appears to be that because of the Arctic's remoteness, the existence of permafrost, and the fact that it is less expensive, it is acceptable to bury or burn these materials, regardless of their toxicity, rather than remove them to a properly designed hazardous waste facility.

After considering substantial evidence related to Arctic waste disposal, the Standing Committee clearly identified a need for developers to be required to remove hazardous wastes they generate (Standing Committee at 197-98, Recommendation 108). The Government Response, however, reduces this recommendation to the following: ". . . removal of resulting wastes and materials from the Arctic **should be preferred** to other methods of disposal. . . " (Government Response at 64). The use of carefully worded phrases does not conceal the fact that Government is not prepared to make CEPA effective in the Arctic by enacting unambiguous legislation to ensure that hazardous materials shall, not "should," be removed from the Arctic.

Unless explicitly prohibited by law, hazardous wastes will continue to be buried; DND is presently proposing this very operation. **In view of the many current threats to fragile Arctic ecosystems, it is unacceptable to NTI that hazardous wastes continue to be buried in the Arctic.** We and others made this point to the Standing Committee countless times, as witnessed by its recommendation.

C. Non-Hazardous Waste Disposal

Landfills in the Arctic are effectively ignored in the Government Response. Contrary to the Standing Committee's Recommendation that non-hazardous wastes should not be **buried or ocean dumped** except in circumstances where it has been demonstrated that no more environmentally sound practice exists (Standing Committee at 198, Recommendation 108), the Government Response only states generally and with respect to ocean disposal that the removal of waste and materials from the Arctic "should be preferred to other methods of disposal" (Government Response at 64). This response ignores the position of Inuit recognized by the Standing Committee, that is, that fragile Arctic ecosystems warrant special treatment. There are potential environmental effects to the burial of non-hazardous wastes in the Arctic which do not exist in the south, such as the possibility of frost heave. In addition, Arctic flora and fauna are much more susceptible to disruption and take much longer to recover, if they do at all, than do their southern counterparts.

For these reasons, NTI recommends that Northern operators be required to detail, before an operation is permitted, how it intends, physically and financially, to remove non-hazardous materials, scrap material, waste, debris, etc. from the North following completion of the operation. For existing operations, and as proposed by Government in the case of ocean dumping, in no event should burial be permitted if opportunities exist to recycle, re-use or treat the waste without undue risk to human health or the environment or, and in this sense we would modify the Government proposal, the cost is not prohibitive (Government Response at 63, proposal 8.26) . Where burial is permitted, landfill designs and closure methods must seriously address the issue of frost heave and permafrost degradation.

D. Ocean Dumping

Although NTI does not consider additional legislation as necessarily providing more effective control (witness the flow of PCBs in violation of CEPA into the marine environment at Resolution Island of South Baffin, used since the Second World War, which it took DIAND until 1995 to stop), we do not believe that authorization for the creation of "environmental objectives and codes of practice" is sufficient to preserve the quality of coastal areas or reduce the contamination of marine areas (proposal 8.23). The flow of known contamination into the marine environment from onshore or offshore sources must be prohibited under CEPA.

The only mention in the Government Response of the unique circumstances in the Arctic are in six lines entitled "The Arctic - A Special Case in Terms of Ocean Disposal of Wastes" (Government Response at 63-64). NTI appreciates the Government's recognition of the uniqueness of ocean dumping in Arctic waters. In NTI's view, however, the Government Response to the Standing Committee is unacceptably watered down (no pun intended).

The Standing Committee recommends that ocean dumping be permitted "only where the proponent has demonstrated that **no other more environmentally sound option exists**" (Standing Committee at 198, Recommendation 108). The Government Response, however, adds that ocean dumping should be permissible "where it is the environmentally preferable **and practical** option. . . ." This seemingly small addition of a "practical option" most effectively kills any possibility of making an argument to take it out rather than dump it in the ocean. Does a "practical option" supersede an environmentally preferable one? Since it most certainly has in the Arctic to date, NTI concludes that where a strong response was called for, the Government Response fails to deliver.

Given the importance of the marine environment to Inuit, it is NTI's view that there should not be any permissible ocean dumping and that this should be reflected in a renewed CEPA. Having stated this, we do recognize both the need to dredge harbours and the commonly accepted practice of returning organic matter (nutrients), such as commercial fishery plant waste, to the marine environment. NTI recommends, therefore, that these two operations be excepted from a definition of ocean dumping operations, which should otherwise be banned.

NTI agrees that if there are to be exceptions to an ocean dumping ban, the burden of proof should be on the permit applicant. In addition (and upon the condition of the Waste Assessment Framework being finalized for review for possible incorporation into CEPA), NTI agrees that a renewed CEPA should not allow for permit issuance if the opportunity for re-use or recycling of waste exists (proposal 8.26).

NTI does not, however, agree that permit issuance should proceed when it is shown that ocean dumping is an environmentally preferable option (proposal 8.27) since we simply do not accept such a concept. For example, in connection with NTI's recent unsuccessful attempts to persuade the Department of National Defence to remove from existing DEW Line sites material dumped deeper than the 2 metre mark at low tide, we do not share the Department of National Defence's view that it is appropriate to dump inorganic debris since it provides a needed source of fish habitat, or is believed

by some to provide a needed source of iron in the ocean. (We resist commenting on a perceived need for anyone to play God in the Arctic environment!)

Similarly, as recently as two years ago, Panarctic Oils Ltd. applied to dump several tones of scrap metal off the shore of the High Arctic, Cameron Island. NTI cannot agree to the need for the dumping of scrap metal, structures at sea, ships etc. given the salvaging options available today and the need to live sustainably. Given that Panarctic's and National Defence's clean-up plans represent the prevailing attitude toward ocean dumping in Nunavut today, NTI continues to oppose any ocean dumping beyond what may be determined to be absolutely necessary.

Finally, there is a point made in the Government Response that requires clarification with respect to the Government's proposals on ocean dumping. It is unclear whether the items listed in proposal 8.25 as appropriate for ocean disposal represent the exclusive list that will be included in an amended CEPA, or whether they are by way of example. If the latter, when will a complete list be ready for review?

E. Other Arctic Issues

The Government Response ignores other key recommendations of the Standing Committee with respect to the Arctic, including Recommendation 104 (Standing Committee at 194), addressing efforts that Canada should be making at the international level to address environmental contamination of the Arctic; Recommendation 105 (*id.*) addressing a much needed review of the *Territorial Land Use Regulations*; Recommendation 106 (*id.* at 195) addressing the extension of the Arctic Environmental Strategy; Recommendation 109 (*id.* at 200) addressing environmental research in the Arctic and Recommendation 110 (*id.* at 202) regarding Environment Canada's role in the North. NTI requests the Government's response to these Recommendations.

In sum, in NTI's view, the Government has not, in fact, presented a special case for the Arctic as called for by the Standing Committee.

II. Non-Derogation Clause

The Government Response states (at 79) that "the Government of Canada will review the appropriateness of including a 'non-derogation clause' in an amended CEPA." NTI considers this inappropriately vague. The inclusion of a non-derogation clause is a critical element in notifying the public of the constitutional supremacy and potential

applicability of aboriginal and treaty rights. Indeed, the inclusion of such clauses has become a standard legislative drafting practice for federal legislation which could affect aboriginal or treaty rights. *See, e.g.*, the *Firearms Act*, the *Canada Wildlife Act*, the proposed *Canada Oceans Act*. The following language is generally appropriate:

> *For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.*

III. Guiding Principles

NTI generally agrees with the proposed Guiding Principles for an effective CEPA. We have some questions, however, regarding the philosophy underlying proposal 1.8 (at 15), which require clarification before preambular language is drafted. In particular, what is meant by the proposal that the Preamble make "reference to the interrelationships of economic and environmental principles and acknowledge the role of such economic considerations as the benefit-cost approach and flexible economic decision-making"? The points made by Standing Committee are that economic considerations not be allowed to lead to a diminution of environmental standards (Standing Committee at 6, 10); that the federal government must systematically integrate environmental considerations into its decision-making (*i.e.*, full-cost accounting) (*id.* at 11); and that CEPA's philosophy should reflect the fact that, in the long run, environmentally rigorous standards and pollution prevention are the most effective ways to achieve environmental objectives at the lowest cost (*id.* at 36). These are the points that should be reflected in a renewed CEPA and any preambular language regarding the incorporation of economic principles into CEPA's philosophy should reflect those points. If the intent of the language quoted above is to allow economic considerations to weaken environmental standards, NTI would consider this an inappropriate philosophy for CEPA.

IV. Administration

1. CEPA National Advisory Committee

NTI strongly supports the continuation of, and the expansion to include aboriginal representation on, a CEPA National Advisory Committee. The revitalization of CEPA will hopefully serve to revitalize as well the previously dwindling interest in the Committee by its membership. To ensure that this occurs, NTI recommends that the

duties of the Committee be reassessed to confirm its place as a motivator in achieving the goals of the new CEPA. To this end, a stronger decision-making role should be considered for the Committee.

There is obviously a need for further and specific consultation between Government and aboriginal peoples regarding the form of aboriginal representation on the Committee, how a newly constituted Committee will function and reach decisions and the role of the Committee given the proposal for bilateral agreements or arrangements with aboriginal peoples.

In general, NTI wishes to preserve the option of separate representation for Nunavut Inuit on the Committee, given the extensive Inuit land claim and other responsibilities relevant to the Nunavut area. There may be some areas in which representation by, for example, the Inuit Tapirisat of Canada, can meet the interests of Nunavut Inuit, but this remains to be the subject of consultation between NTI and ITC and other regional Inuit organizations.

2. Equivalency, Administrative and Environmental Management Agreements

NTI strongly supports the inclusion of the future Nunavut Territorial Government as a potential party to administrative and equivalency agreements under CEPA. NTI also supports the proposed authority of the Minister of the Environment to enter into administrative ("work sharing") and environmental management agreements with aboriginal peoples.

It may also be appropriate for the Government to enter into administrative agreements with Inuit with respect to activities on Inuit Owned Lands for such activities as inspections, investigations, monitoring and reporting. As owners of over 350,000 square kilometres of land in Nunavut, Inuit currently have land management regimes in place pursuant to which land use activities are permitted, inspection and monitoring are performed and reporting requirements are in place.

3. Economic Instruments

NTI believes that tradeable permit systems are only effective options for environmental management within controlled ecosystems where there is a sufficient level of industrial activity to allow a marketplace for permits to develop. Tradeable rights for ocean dumping or for emissions and effluent are totally inappropriate for use in Nunavut. The authorization of such systems should be accompanied by a requirement for measures to

ensure their careful design and implementation to avoid local environmental degradation and other inappropriate use.

V. Public Participation

NTI is supportive of increased public access to information and increased private citizens rights such as those contained in provincial "environmental bills of rights." We are concerned, however, that the provision of information on computer technologies potentially biases access to information in favour of the highly educated, employed and English-literate members of Canadian society. The Government of Canada has an obligation to ensure that government-provided information, as well as information regarding the availability of such information and how to access it, is equally available to all Canadians. This includes unilingual Inuit and other aboriginal peoples, whose primary access to information may be verbal, *i.e.*, through radio; as well as unemployed persons and persons without home computers whose primary access to written information is through the public library.

NTI urges the Government to examine the most effective means of making accessible the information and rights in Chapter 3 of the Government Response to the groups mentioned above, of making people aware of its availability and of empowering people to take advantage of such information, and to commence consultation with aboriginal peoples and others on this issue.

NTI also has serious concerns about "a fee structure for users" of Government-provided information. In NTI's view, paying for access to government-provided information flies in the face of the principles of a democratic society, making access to public information -- especially as in this case, information relevant to health and physical well-being -- dependent on the ability to pay. This reflects a philosophy of disregard for the least advantaged members of society.

VI. The Federal House

Nunavut Inuit have experienced continued frustration with the failure of Government to effectively control the activities of developers and others on Crown lands in Nunavut. For this reason, we support strong regulation-making authority under Part IV of CEPA that clearly encompasses all federal entities, lands and operations as well as tenants and others occupying Crown lands, as recommended by the Standing Committee.

In some respects, the Government Response is vague or silent regarding Standing Committee recommendations. For example, the Standing Committee recommends that the requirement of ministerial concurrence for Part IV regulation-making be abolished, and that Part IV regulation-making take precedence over other statutes, thereby reversing the status quo whereby Part IV regulations may be made only in the absence of other federal regulation-making authority (Standing Committee at 171). NTI supports these recommendations and questions whether it is the intent of Government to implement them. With respect to the former recommendation, the Government Response (at 78) states that affected Ministers will be "fully consulted" prior to regulation-making under Part IV. The Government Response ignores the latter recommendation.

In addition, it is unclear whether it is intended that the authority referenced in proposal 10.4 (Government Response at 77) and 10.7 (*id.* at 79) will include activities on federal lands and whether the authority is intended to include all those activities referenced at Recommendation 92 of the Standing Committee (Standing Committee at 172-73).

We also note that the Standing Committee has recommended that federal departments and lands, etc. that hold hazardous substances in quantities that exceed prescribed threshholds be subject to registration requirements (*id.* at 161, Recommendation 88), and we assume that the proposal 6.15 is intended to include such registration (Government Response at 49). As mentioned above, NTI supports this recommendation, as well as the recommendation for a unified system for identification and registration of fixed sites containing hazardous substances (Standing Committee Recommendation 88 and Government Response at 49, Proposal 6.16).

NTI does wish to remind Government of the power and authority of certain land claim created boards and institutions, including, for example, the Nunavut Impact Review Board (NIRB) and the Nunavut Water Board (NWB). Once established in July 1996, the NIRB will screen and review and set terms and conditions for project proposals within the Nunavut Settlement Area. The NWB will review and, where appropriate, grant, with terms and conditions, applications for water license approvals. These bodies will set standards for environmental assessment and water use in Nunavut on a project specific basis in light of their constitutionally protected mandates to protect the ecosystemic integrity of the Nunavut Settlement Area and protect and promote the well-being of residents and communities thereof.

Terms and conditions set by these bodies will likely address matters similar to those suitable for regulation under Part IV, including for example, emission or effluent limits, requirements for inspection, gathering of data, etc. It is critical to the effective

operation of these bodies within their mandates that a renewed CEPA applicable within the Nunavut Settlement Area expressly recognize that **NIRB and NWB terms and conditions prevail over less stringent or otherwise inconsistent standards set under CEPA**. In NTI's view, a general non-derogation clause, while critical, is alone insufficient to address language in particular provisions of a federal Act which purport to, for example, give regulation-making authority to the Governor in Council which may conflict with or is superseded by the authority of a body such as NIRB or NWB. Such provisions should expressly recognize land claims institutions in order to alert users to the potential for conflict. We propose that language such as the following be included where appropriate:

> the Governor in Council may make regulations *not inconsistent with the requirements of any land claims agreement*

or

> the Governor in Council may make regulations *not inconsistent with the authority of existing and future bodies established pursuant to a land claims agreement referred to in section 35 of the Constitution Act, 1982.*

VII. Aboriginal Self-Government

As discussed above, the *Nunavut Agreement* provides for an integrated Nunavut Resource Management system which will, on a project specific basis, set standards for environmental protection in Nunavut. The *Nunavut Agreement* does not, however, otherwise address general authority for environmental management. Nunavut Inuit may in the future commence discussions with Government with a view to negotiating a separate agreement addressing such authority. In this regard, we note the Standing Committee's Recommendation 98 (at 187) which calls for DIAND to establish a framework for discussing CEPA and the amendment process with aboriginal peoples who do not have comprehensive environmental management regimes in place. NTI, therefore, requests that it be contacted in terms of such consultation. In addition, future environmental management authority should be recognized in proposal 10.10 (Government Response at 80).

VIII. Training for Aboriginal Peoples

NTI supports the concept of training in environmental management for aboriginal peoples and wishes to be consulted on the training that the departments referenced in proposal 10.12 (*Id.* at 81) currently offer or intend to offer.

IX. Participation in the Development of Objectives, Guidelines and Codes of Practice, the Priority Substances List and Regulations

NTI looks forward to be contacted by Government for consultation at an early stage in the development of the matters referred to in the Government Response at 81.

Thank you for the opportunity to present the comments and concerns of the Inuit of Nunavut. NTI is, of course, available for further consultation on these and other matters relating to a renewed CEPA.

Sincerely yours,

James Eetoolook
First Vice President, NTI

The Ontario Chamber of Commerce

ENVIRONMENTAL PROTECTION LEGISLATION FOR A SUSTAINABLE FUTURE

The Response of the Ontario Chamber of Commerce to
"Environmental Protection Legislation Designed for the Future - A Renewed CEPA"

Tel: (416) 482-5222
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Ian S. Cunningham
Director of Policy

The Ontario Chamber of Commerce

2345 Yonge Street, Suite 808, Toronto, Ontario M4P 2E5

March 1996

INTRODUCTION

The Ontario Chamber of Commerce through its 200 federated community Chambers of Commerce and Boards of Trade enjoys membership of more than 60,000 business organizations. Our members are drawn from all areas of the Province and are engaged in every sector of Ontario's economy. They include small, medium, and large employers who provide millions of jobs and one of the highest standards of living in the world. Our expansive and diverse membership and our grassroots democratic model of governance solidifies the Ontario Chamber's position as the "Voice of Business" in the Province.

We are pleased to have the opportunity to provide our views on the Federal Government Response to the Standing Committee on Environment and Sustainable Development Report on CEPA.

SUMMARY OF RECOMMENDATIONS

SUPPORT

1. Support the precautionary principle as defined by UNCED.
2. Support the balanced interrelationship of economic and environmental benefits.
3. Support cost benefit approaches.
4. Support flexible economic decision making.
5. Support harmonization between Provincial and Federal Governments.
6. Support efficient use of resources (staff and funds) by regulators at all levels.
7. Support taxation continuing to be the responsibility of the Finance Minister.
8. Support Pollution Prevention.
9. Support P2 at source.
10. Support governmental institutions that operate within their constitutional mandate.

DO NOT SUPPORT

1. Do not support the use of economic instruments that become an excuse for taxes.
2. Do not support the concept of cost recovery when no controls on how the costs are developed.

3. Do not support devolution of taxation powers to other Ministers.
4. Do not support information collection (data) that is excessive and duplicatory.
5. Opposed to confidential data divulgence without protection.
6. Opposed to public rights of action that do not hold such public accountable for responsible use of those rights.
7. Opposed to enshrining information systems like NPRI in CEPA.
8. Opposed to anything in CEPA that is of no environmental significance.
9. Opposed to legislative systems promised on belief that one size fits all. National Norm should be risk based.
10. Do not support unproven enforcement tools such as AMPS.
11. Opposed double layering of regulation and enforcement.
12. Opposed to more policemen.
13. P2 should be performance based. It should not limit the potential role of recycling on or off-site.
14. Opposed to constitutional invasiveness in provincial and municipal affairs where in those Provinces it is wholly and totally inappropriate.
15. Opposed to processes to control toxics that lack solid and defensible factual base and risk assessment.
16. Do not support legislative changes aimed at implementing inappropriate worded internal agreements.
17. Opposed to laws that invite constitutional challenges--wastes time, money, and efforts.

Detailed comments by section follow:

Guiding Principles Executive Summary - Chapter 1

Section 1.7 The precautionary principle is supported as reference by U.N.C.E.D. The Ontario Chamber of Commerce will support this because of its reference to "cost effective measures to prevent environmental degradation". Likewise we support strongly the Government proposal to incorporate in the Preamble a reference to the "interrelationship of economic and environmental principles and acknowledge the role

of such economic considerations as the benefit-cost approach and flexible economic decision making". The addition of this is an improvement over the Caccia Report.

Section 1.5 We are pleased that "intergovernmental co-operation" was added to the Guiding Principles list from the Caccia Report but are unhappy it is so vague. This co-operation is key to preventing duplication, constitutional problems, and resource waste. This is really about effective harmonization and means each level of Government must function squarely within its respective authority and is responsive to practical regional needs that differ from region to region.

Section 1.9 We have discomfort with User/Producer Responsibility. The Government Response in this section sinks into politicized rhetoric with the linkage of user/producer's responsibility to the polluter pay principle. This linkage in such a public context reflects a lack of understanding of where the people of Canada are presently at, in respect to their individual and collective embrace of environmental considerations in their decision making. The text also fails to address the accountability of the Government to be an active participant in finding ways to assist users and producers to maintain a sustainable country. The Government Response creates the underpinnings for a policy that is rigid and negative to evolving technologies, products and ideas. In a document of this nature, the Government owes it to Canadians to avoid such negative commentary.

Section 2.12 On a cautionary note, the reality of duplication found in some of these agreements (e.g. COA and Binational Agreement on the Great Lakes with USA Binational Agreement on Waste movement). The issue while questionable use of government time and resources, probably would not have an impact on the regulated community if it were not for the fact that some of these arrangements are entered into without first considering the question of duplication, or capability to resource the same. The failure to manage such issues has resulted in further demands in the regulated community not only to respond to the agendas set up thereunder. All of this is a form of duplication and mismanagement of resources that is irritating, expensive, and

counter productive. The Government needs to create a set of criteria to screen ideas for such arrangements to prevent the problem in the first place. This lacking of rational decision making in the Government Response must be addressed.

In respect to economic instruments, the Government Response lacks sufficient references to the need to encourage intersectoral development of solutions to environmental issues. There is a rudimentary sense of this in the idea of "permits" and "credits" but the response does not reflect the potential solutions to environmental issues that could come from intersectoral work in say chemical and metal, or metal and the resource sector or manufacturing and the building/construction sector. The Government Response in this area lacks a depth of understanding of how the application of Sustainable Development concepts might well provide overall success. Embedded in this, is the need for the Government Response to reflect a desire to put in place in the new CEPA mechanisms, to be far more flexible and guiding on such issues and, to be prepared to remove impediments to sustainable progress, such as rigid views as to what is deemed Pollution Prevention, the role of recycling, and the definition of waste.

We are pleased that financial incentives in the form of tax measures are within the authority of the Minister of Finance. This, in our view, avoids confusion and maintains the Federal Government's mandated management process of such matters (see 2.13).

We also wish here to emphasize that economic instruments cannot be an excuse for taxes. The Response is unclear on this point.

We are also concerned about cost recovery in 2.17 and the lack of control over who decides what services are "useful services". The idea is <u>not</u> to fund E/C activities that are contrary to its authority under the Constitution or end up duplicating the significant capabilities and activities of the Provinces.

Public Participate - Chapter 3

In respect to section 3.2 we see a need for careful consideration to be given to what information is made part of a public registry. Our concern here is that some of the information supplied to Government may be/is confidential and/or has competitive implications that if released, could damage the business that gave it to the Government in the first place. Further, what may seem relatively harmless information today could well change as business changes the way it operates and increases its overall control over all "products" of its processes. These "products" today may be viewed as wastes yet tomorrow, may end up being raw materials or semifinished products that other businesses use to make saleable products. There will also be information that could adversely affect the development and proprietary rights over a new technology that by the open access proposed could be harmed. The private sector needs solid protection if it is to supply data to Government.

These issues need further thought before the Government's proposals are acted on to protect Canadians and competitiveness.

In section 3.3 we wish to comment on the fee structure that may be proposed here. It is important that if such a registry needs to be funded, it is not funded by the suppliers of the information.

Additionally, we suggest the Federal Government consider the Ontario experience with registries and their difficulties making them work properly.

In section 3.5 reference is made to a proposal to expand the accountability of the Minister to include a final report regardless of legal action. We suggest that this is inappropriate without protection being in place against abuse of process. Otherwise, the Minister is exposing himself and government resources to needless work and expense for no purpose that in all likelihood will result in needless work and expense

for those involved in the investigation as well. With increasingly reduced resources on all sides, the Government ought not to so expose itself.

We are concerned with the expanded "whistleblower" section (3.8) to express concern that the Government Response is not clear enough as to how it intends to protect affected parties including itself form wanton, reckless, and inappropriate use of the protection suggested. There must be built into the protection an accountability factor that may be imposed on those who use the protection inappropriately. Otherwise basic rules of fairness and justice will be thwarted.

Likewise in section 3.9 dealing with the right of citizens to take civil action against a party, the problem with the Government Response is it is too vague as to how the Government intends to protect all Canadians from inappropriately launched actions. The right to sue which is being proposed is very much like the equitable remedy of mandamus. A basic requirement of the use of all equitable remedies is that the applicant approach the court with "clean hands". This concept is not referenced in the Government Response and needs to be. Otherwise, Canada will be faced with added resource demands in their legal systems and businesses, etc., for inappropriate reasons. As a society we cannot afford such inappropriate resource use and it is the obligation of Government to protect those resources for all Canadians.

We are pleased with the Government's decision to consider further the implications of a new civil remedy for environmental risk. It is important that Canada's existing legal conventions be considered carefully before the creation of new statuary remedies (page 27).

Ecosystem Sciences and National Norms - Chapter 4

In section 4.2, the scope of the authority proposed for the Minister of the Environment is broad and virtually unchecked. Under the proposed authority it is totally within the discretion of the Minister to collect a vast range of information whether or not it relates

to emissions to the environment. The only constraint is the Minister "consult" the Minister responsible for Statistics Canada before collecting State of the Environment data and that the Minister believe the intended data collected is necessary and cost-effective. This is not a strong enough check to protect Canadian companies and other organizations required to provide the information.

All the above concerns are even more compelling when section 4.3 is considered and the Government's proposal to enshrine NPRI in CEPA. If the issue of what gets collected is not resolved then we will end up with massive legislated data collection requirements for dubious purposes.

We also caution the Government in respect to its suggested stakeholder approach to changes in NPRI to ensure that there are well defined, defensible procedures in place to prevent "perceptions" of what information would be useful ultimately supporting change in data collection requirements. These innocent in appearance decisions create significant burdens on those required to supply data and such wastefulness of resources is no longer acceptable.

The issue of confidentiality in 4.4 to 4.6 is ambiguous and needs significantly more clarity. If claims of confidentiality are made, there must be clear controls on the burden placed on the claimant in making such a claim. Without this clarified it is conceivable that substantial paper burdens will be created that will reduce the likelihood of confidentiality being achieved. Reference that this issue must be seen in the context of competition both in and outside of Canada and as such is a legitimate issue as it impacts on Canadians ability to perform effectively in progressive environmental activities as well as be competitive in a global sense. Because there are so many issues associated with this, it is recommended expert opinions on how to deal with it fairly for all sectors be obtained before any actions affecting confidentiality are taken.

In respect to National Norm's it is our belief that "one size does not necessarily fit all" as is being suggested by this section and how they would apply in Canada. This needs to be re-thought.

Enforcement - Chapter 5

We believe the incorporation of administrative monetary penalties (AMPS) is a matter for further consideration and study. We understand that AMPS has not always worked effectively in jurisdictions where it has been implemented including US OHSA and EPA. In respect to US OHSA, there have been reports of alleged abuses involving control of inspectors authorized to issue penalties, training of inspectors, and limits on penalties. Further we understand that there have been difficulties operationalizing AMPS despite the recent establishment of AMPS in the Clean Air Act under US EPA. In any event, AMPS must not be introduced into CEPA until an operational plan is fully developed.

The rights of Canadians which are established by our legal traditions must not be compromised by CEPA. CEPA must respect Canadian traditions of protection and the rule of law.

The heavy emphasis on sanctions and enforcement, and the extensive powers of inspectors and analysts set out in this section is the source of serious concern.

We question whether the approaches being suggested meet the harmonization agenda allegedly being worked out with the Provinces, fit clearly within the jurisdiction of the Federal Government from a constitutional perspective, and whether the particular programs being suggested do not result in what amounts to double jeopardy wherein a regulated industry could be impacted both from a Provincial perspective and also from a Federal perspective for essentially the same issue. To engage in such activities is to waste resources and duplicates services as well as invites debilitating constitutional arguments. Additionally, we are not in favour of the suggestion of new officers with new powers. We question the need for this heavy emphasis on sanctions and enforcement, particularly in light of the existing position of the Provinces to resource

this area and deal with fundamental issues of environmental protection using its own forces. As such we believe that the provisions reflected in 5.8, which less than clear as to what is intended, as well as in 5.9 and 5.10 be carefully reviewed prior to any addition to CEPA or any amendment to CEPA to incorporate these provisions.

We believe section 5.14 would allow court awards to be directed to specific areas. As such, this would allow for the indirect funding of activities that may have nothing to do with the geographic area where the offence was committed, and the funding of parties that might have obtained such funding in any other way. The idea of the penalty being "disconnected" from the wrongful conduct is contrary to the well entreated and understood concept of "natural and logical consequences". This proposal by the Government also allows for the politicization of offences so as to acquire and direct money of others through offences to certain groups. This makes no sense and needs to be removed.

In section 5.12, Provinces already have reporting and prosecutorial procedures in place, and the proposed powers for CEPA would be a duplication and conceivably a conflict. It is, therefore, suggested that this be harmonized in favour of provincial procedures already in place. One offence; one charge; one prosecution; one fine.

We also note the enforcement section does not make reference to protecting self initiated reviews or audits and/or ISO 14000 processes that progressive businesses might employ to deal with compliance and better management of environmental issues. We see this as a serious short coming in the Government Response and suggest the carefully thought through process which resulted in the Ontario position on this issue be adopted in CEPA. With such a heavy emphasis on sanctions and enforcement as set out in this section and without references to protection for such self initiated audit activities, the Government's intentions are clearly suspect and this needs to be cleared up.

Pollution Prevention - Chapter 6

There is a lack of basic agreement with the whole "Pollution Prevention - A Federal Strategy for Action" policy statement. The proposal to roll this not agreed to policy into the statute is not acceptable first off. We also emphasize the necessity that there be no added bureaucracy created by CEPA amendments as it is unnecessary and unacceptable.

Please not that there is significant disagreement with the Environment Canada position on off site recycling not being part of its definition of pollution prevention. Recycling should be encouraged and not inhibited regardless of where it occurs, therefore, do not use recycling as a support for pollution prevention.

The Government's desire in section 6.1 to require a P2 plan for all schedule 1 substances embedded in CEPA, particularly with the prescriptive nature of what a P2 plan is to look like (see 6.4), creates a very invasive position that reflects a preconceived notion of P2 and fails to capitalize on what can be obtained from a performance oriented approach as opposed to a prescriptive approach.

This proposed approach is contrary to some Provincial (namely Ontario) initiatives and is an invasion into provincial affairs raising obvious questions of constitutional authority.

We believe the Government is quite aware of the issue of constitutional authority but here it is ignored.

We also have serious questions of how capable the Federal Government is in the first place to equitably administer such an invasive program, and are concerned with the unnecessary, and in all likelihood inappropriate, expenditures and resource use that all this suggests. Invasive programs tend to be politically administered, and vary from term to term of office.

The process of P2 appears to be contrary to the publicized goals of harmonization and is questionable in this regard as well.

The P2 proposal has not adequately been thought through in the context of its linkage to SOP and TSMP and merely compounds difficulties with those programs.

We suggest this invasive proposal is the equivalent of a "club" when a "stick" or "gentle guidance" would do.

Indicate that what is proposed fails to recognize what in Ontario at least is already in place. (i.e.)

- Regulatory action on water through MISA
- Voluntary action by way of ARET, CIPEC, and P4 etc.

Various other Provinces and municipalities are actively controlling and reducing pollution, and the P2 CEPA programs should refer to the activities and initiatives at the Provincial level. We suggest a more useful role for CEPA is to develop standards that all Provinces can aspire to, to achieve pollution prevention.

The Ontario Chamber believes P2 as structured has the real probability of creating uncompetitive situations contrary to the principles of performance oriented policies and principles of sustainability.

The Government Response is not clear enough in respect to 6.1 on the requirement that Environment Canada demonstrate the cost/benefit of requiring a P2 plan, or demonstrate that the extent to which industry is already engaged in dealing with the issue, is not sufficient. The Ontario Chamber questions the ability of Environment Canada to carry our valid cost/benefit analyses on businesses they are not familiar with. These "requirements" are referenced with the words "could include" in the second paragraph below 6.1.

We argue that in 6.7 the inclusion of "pollution prevention activities" in NPRI is unwarranted as creating significant information burdens on those involved in NPRI or no real purpose. As well there are constitutional questions raised by 6.7 and the question whether Environment Canada has authority for this proposal.

This "control" over business thwarts the significant and growing role of voluntary approaches and raises the serious question whether the Government is truly committed to a new way of addressing complex environmental issues in a time of restraint and whether it is truly committed to the principles of sustainability.

The natural outcome of these Government initiatives is to take over a substantial part of the operations of business. Clearly this is outside the mandate of Government and beyond their capabilities in any case.

In respect to 6.12 - 6.17 and the powers which are being suggested for environmental emergencies and the Federal authority to deal with emergencies, it is our view that this is unnecessary as Federal powers are already sufficient and/or there is sufficient existing Provincial and Municipal authority and systems to deal with the issue.

Biotechnology - Chapter 7

The Ontario Chamber of Commerce supports the statement made in the opening which states "the economic potential of biotechnology as a new technology is considerable." However, it must also be noted the potential benefit of biotechnology is not only an economic one. It also shows tremendous potential in solving some of Canadian societies most pressing environmental, agricultural, and health care problems, societal value that simple economic measures may not be able to account for.

The Ontario Chamber does not believe that biotechnology products should be regulated under environmental legislation. Regulating biotech products such as new drugs, health care solutions or even innovative remediation or agriculture technologies under environmental legislation is not acceptable.

This proposal represents a serious threat to the high tech biotechnology industry in Canada. It attempts to cross many lines such as confidentiality and lines of jurisdiction between Environment Canada, Agriculture Canada, and Health Canada. This proposal also presents some significant threats to business and industry in their ability to remain competitive with other counties in the field of biotechnology.

Definition

The document is vague in its definition of biotechnology and the definition needs to be revisited in an effort to ensure all stakeholders agree with what is included in the definition.

Control of Non-living Products

Controlling non-living biotech products as if they are chemicals is not acceptable. Biotech products may differ significantly and trying to apply the approach used for chemicals may not fit in many instances. More stakeholder consultation with the biotech industry needs to be done.

7.3

It would be extremely difficult to develop acceptable, agreeable criteria based on existing toxicity criteria. Using existing approaches, such as risk assessment, may be an acceptable alternative. Another alternative may be to model approvals after what is currently done by the Health Protection Branch for new drug submissions, if approvals are required at all.

The safety net approach outlined is not acceptable. Exceptions for products which would have a net societal benefit may be required even though they do not meet these "safety net" criteria. Products which do not meet the three "safety net" criteria may need to be accepted if it can solve problems of immanent concern such as aids,

cancer, global warming, and ozone depletion. This safety net approach would limit availability to solutions.

7.5

Enabling the Government to issue permits for biotech products is simply creating more bureaucracy and should not be supported. The only time a permit or approval should be issued is when the product presents a "significant" risk to human health or the environment. Any cost recovery of fees must not be another excuse for taxes. Fees must be based on the actual costs to Government and Government must be able to account for and justify those costs.

Monitoring the environmental effects should be the responsibility of the proponent not the Government. The Government's role must stop at the development of appropriate assessment guidelines and approvals where significant risk of human health and the environment is present only.

International Commitments

Any instruments must be harmonized with Provincial and Federal jurisdictions. They must not create an unlevel playing field which inhibits business or development in Canada or from Province to Province.

Application to Pollution Prevention

The Ontario Chamber supports pollution prevention. However, any technologies and products must be measured on the basis of cost/benefit and risk. If a product or technology offers a net benefit to society, and does not present a significant threat to human health or the environment, it must not be limited from use or penalized.

7.8

Recognizing the potential of biotechnology the Government must not regulate groups to participate, particularly industry and business as it will discourage investment in Canadian research, development, and manufacturing of these products in Canada.

Controlling Pollution and Wastes - Chapter 8

The Ontario Chamber does not believe the approach being taken by the Government in this chapter is correct or productive. Section 8.1 sets the tone by suggesting the Federal Government will decide what type of framework is required, and while it speaks of consultations with the Provinces and others, it has a strong prescriptive tone. This raises constitutional, harmonization, and basic approach (i.e. prescriptive as opposed to performance based) issues that in our view are not thought out sufficiently. The Federal proposal language also does not suggest a recognition of the differences in Canadian situations from place to place and the need for flexibility in respect to approaches in different areas.

Additionally in 8.1 the Federal Government needs to be mindful that the "emergency situation" is fraught with considerable differences of opinion in light of the Hydro Quebec case on PCB's. The Federal Government ought to develop other means through its place at CCME and in other stakeholder forums rather than to run the risk of acting alone in the case of what it deems an emergency. The last thing the regulated community needs is to be involved in Hydro Quebec litigation to sort out jurisdictional issues that could well have been solved another way.

Additionally, the tradeable permits references in 8.1 are not feasible in many areas. In some areas, emitters are in monopolistic positions which would distort the permit market while not necessarily solving the pollution problem. We also question if the Government has enough data on emissions in many locations to set credible permit limits and thus allow a trading system to work.

In section 8.2 (et al.) we approve of the Response in its proposal to allow the NEB to continue to have authority over fuel exports (8.6). However, in 8.2 to 8.8 we caution that the proposals must be very clearly thought out to avoid any actions unnecessarily add costs to the system which will ultimately be passed on to consumers. We also note in 8.5 the Government is suggesting prescriptive authority be created in respect to the formulation of fuels not combusted thereby not applying performance oriented approaches. We are concerned about this principle.

In respect to Wastes on page 58, the Government argues the need to meet international commitments but does not seem to resolve first where we stand in Canada. The definition of waste is critical to this process so we do not get wrapped into an ENGO driven definition in Basel for example. A waste is only a waste at the point of final disposal. If a waste is recycled or used at any time as an input in another process it should be considered a raw material not a waste. One must also be concerned that a raw material for a process may be considered a waste because of residual material that are present in the raw material. There has been references to the definition of wastes in part being determined by whether you have to pay someone to take the material. This, if it is still being espoused, is inappropriate and will foul up the activity of "creating a market" for a perfectly useable, made to specification products where the costs of distribution must be borne by the seller for a time to get the demand created.

The control of products and non-hazardous solid waste can lead to non-environment/health risk based controls that may result in protectionists non tariff trade barriers. These recommendations could lead to tighter controls than are necessary.

8.14, 8.16, 8.17, 8.18

This proposal is going to increase bureaucracy and will benefit areas which have access to disposal or recycle sites for hazardous waste. The controls on export and import of hazardous material and waste must be revised to focus upon the presence or

absence of appropriate facilities rather than upon the borders of countries, or the preconceived idea that every nation or province must deal with all of its own wastes. We are concerned these recommendations could lead to political decisions being made which go against the economic reality (e.g. PCB). The Federal Government has a role to play in this area, but it must not abuse this role to support facilities which are not economical. In addition, the Federal Government must be mindful of the implications of NAFTA with respect to controls on waste movement.

In summary, the Federal position is not particularly oriented toward sustainability principles and a focus on how certain materials which are not the prime products produced by a company might become "products" for someone. As such, the Federal Response is lacking and more consideration is required. Also the labelling of a material as a waste is invasive and prescriptive for no useful reason.

We are also concerned that the Federal Government does can adversely impact provincial trade and service issues when it ratifies international agreements (e.g.) global climate change, steel scrap movement, etc.

The Response is not clear on resolving this issue and this needs to be dealt with more thoroughly.

Controlling Toxic Substances - Chapter 9

The Ontario Chamber supports the Government Response in respect to ensuing decisions on substances be risk based. However, there is an uneasiness and concern about the manner in which the Government Response "dallies" with the concept of "inherent toxicity" and fast tracking decision making. This is most apparent in the paragraph above 9.5 on page 70.

In this same regard, the references in 9.1 to relying on OECD other work and applying a "screening level risk assessment(s) based on science" without stronger references

here to the meaning of "science" as it related to "risk assessment" creates great uncertainty. These matters of decision making should be better defined. Additionally, 9.1 makes no reference to how man made substance availability relates to naturally occuring substance availability. In summary, the "science" of others is always suspect until shown otherwise and 9.1 suggests the limits on use of others "science" is not as well developed as it needs to be.

This is fundamentally important as once a substance under the proposed system makes it onto a Canadian list than it is very difficult to remove it as it is evidenced by the limited deletion criteria referenced in 9.4 that, by the way, needs to be broadened. The same "scientific criteria" and defensible decision making should apply to delisting equally as listing on the Canadian list.

Additionally, once on a list, then the difficulties inherent in Environment Canada's TSMP policy must be dealt with. It is very clear when this is coupled with the unacceptable invasiveness of P2 plans as noted in Chapter 6, a considerable resource burden is applied to both the regulator and regulated. Those resources are severely limited and great care must be used in applying them for very real sustainability reasons. The Government Response similar to the Environment Canada TSMP has yet to clear up the uncertainties in this area. Based on the above it is unfortunate the Response used the words "inherent toxicity" in 9.1(l) and to bring a greater degree of certainty to the Government's alleged position to stick with "a risk based approach to decision making" (see Page 70) it is appropriate that these words be removed here and in 9.5.

This will also clear up an misconceptions of the Government's intentions in respect to S.11 of CEPA.

There is another reason for care with the use of language here in respect to the ability of relatively simple phrases to ultimately require significant levels of testing and study for questionable purposes. The issue of who pays for all of this is <u>not</u> addressed.

Without this being resolved, the Government is clearly in a position where it could attract liability. We recommend these issues be considered carefully and the Government position be further clarified.

An additional problem with any listing and subsequent control action is the socio economic impacts in respect to trade and competitiveness. The Government Response references this to some degree in the paragraph above 9.2 on page 69. However, the Government Response is not as clear as it needs to be on how all of this fits into the Federal/Provincial agenda to increase Canadian balanced sustainability both within North America and on a global basis. There is little point in adversely impacting our overall position if others are not prepared to take similar action. Sober thought needs to be given to this that the Government Response does not presently reflect.

This is an inherent difficulty in legislating an Environment Canada policy (TSMP) that is itself "fuzzy" particularly in respect to Track I. Until the TSMP is resolved it will be next to impossible for the legal draftsperson to do their work on CEPA reform. One difficulty in TSMP is between virtual elimination, "chasing the last molecule", etc., generally referenced as the quantitative and qualitative approach embedded in TSMP language.

Numerous issues remain to be resolved with TSMP before any inclusion in a statutory instrument can be allowed.

Not all substances that TSMP might relate to are going to exist in what the Federal Government legitimately considers its constitutional area of authority. To first legislate a "fuzzy" policy without resolving jurisdictional issues as well as to court confusion, legal challenges, and a waste of scarce resources.

We cannot continue to paper over these issues and expect to be sustainable as a country.

There is great unease with section 9.9 which suggests the Federal Government is going on cost recovery for what is essentially their responsibility. This section needs to be thought out better as it suggests the costs of Government's invasive activities under Toxics and P2 will be borne by the regulated community. No verification of any data is proposed and there is concern that decisions could be made on spurious data.

New Substances need to have positions developed (see page 71 and 72). Discussions with other trade associations are required.

Granted New Substances need to be assessed and those requiring assessment should have specified time frames for the work carried out by Government. It is the Government's responsibility to make decisions, abrogating this role to "Stakeholder groups" that may not have the knowledge or expertise is leading us to regulations by perception.

9.14 The time frames are troubling particularly when considered against voluntary agendas which allow businesses to reposition themselves to solve the issue, but also seize opportunities. The forcing of these issues will create non sustainable actions and harm overall competitiveness. The Government Response does not recognize this.

9.15 "Virtual Elimination" must be defined to remove the ambiguities and uncertainties in pages 4 - 6 to TSMP.

9.16 The reference to "industry" only in part two is offensive and contrary to natural justice and fairness. The substances referenced in TSMP go beyond industry and involve a significant number of Canadians - (e.g.) autos/tuneups, etc., barbecues, fireplaces, oil burners, and Government, etc., etc. It is unacceptable for the Government Response to continue the politicized rhetoric of references the sins on industry and allowing the rest of society off the hook. If they are

really serious then address the issue squarely to all Canadians and deal with the political consequences.

9.17 This is talked about in other sections above but is a clear effort to make a constitutional power grab. It goes to the constitutional issues raised by IPSCO and Hydro Quebec and needs to be dealt with. The constitutional validity of seeking data on Provincial boundary movement of toxics MUST be examined. This section must be fettered to clearly identified areas of Federal jurisdiction under the constitution. The section also references indirectly who pays for the data collection. By creating the "authority", Environment Canada can demand the data from the regulated community to whatever extent it wishes and then manipulate the data for its own purposes at little costs. This references stack test, biological monitoring/impact analysis - the works! Comment is required.

Conclusion

The Ontario Chamber of Commerce looks forward to working positively and constructively with the Government of Canada towards a renewed CEPA.

All of which is respectfully submitted,

J.G. Carnegie
Executive Director

W.M. Kenny
President

JGC:WMK:ad

APPENDIX

ONTARIO MINISTRY OF ENVIRONMENT & ENERGY'S COMMENTS ON ENVIRONMENT CANADA'S RESPONSE ON CEPA

INTRODUCTION

The Ontario Ministry of Environment & Energy's comments deal with the following four areas:

1. Cooperation with the Provinces

   Environment Canada's aim is to work co-operatively with the provinces to implement the provisions of a revised Canadian Environmental Protection Act (CEPA). While this is stated as a recommendation - and there are many proposals to improve the administration of the Act - there is little by way of substance on how intergovernmental cooperation could be made to work.

2. Overlap and Duplication

   There is potential for overlap and duplication with many Ontario activities if all the proposed recommendations are incorporated into CEPA. For example, the federal proposals in such areas as public participation, standard setting, enforcement, monitoring, pollution prevention and emergency services.

3. CCME Harmonization

   CCME Harmonization and the CEPA Review have been parallel, unconnected processes over the past two years. Productive use could be made of the Harmonization work with particular emphasis on incorporating points of agreement achieved between the federal and provincial government in such areas as standard setting, monitoring, public participation, compliance/enforcement and pollution prevention.

4. Capacity to Deliver Federal Services

   Announcements over the last two years to significantly reduce Environment Canada's budget call into question the practicality of the proposed recommendations. If federal resources do not support the proposed new provisions of CEPA, it is unclear who will undertake the work on behalf of the federal government - particularly those functions which overlap with provincial responsibilities.

POLLUTION PREVENTION

In general, the proposed emphasis on pollution prevention in a revised CEPA is consistent with the direction in which Ontario is headed. This area provides the opportunity for joint federal/Ontario discussions of a one window approach for industry with respect to federal and provincial requirements.

Consistency is needed between the federal and Ontario approaches with respect to environmental improvement plans and demonstration sites. We concur with the proposed establishment of a national pollution prevention clearinghouse to encourage and facilitate the adoption by industry of clean technologies, production processes and products.

Providing legislatively for some aspects of pollution prevention in CEPA, such as the development of pollution prevention plans for specific toxic substances, is not consistent with the Ministry's current position. Ontario's approach relies on the voluntary development of plans based on sector and industrial processes and not on a substance by substance basis. This federal proposal could result in an increased regulatory burden on industry and increased reporting requirements.

ECOSYSTEM SCIENCE AND NATIONAL NORMS

There are two areas of this section of the Report which are of particular interest to the Ministry:

- Standards Development,

- Monitoring and Reporting

MOEE and Environment Canada develop and set objectives and guidelines, most of which is done cooperatively through CCME. There is a need to rationalize federal and provincial activities in the two areas. Partnerships will be essential to meet Ontario's and Canada's needs for timely environmental standards and for monitoring as a result of shrinking resources at both levels of government.

The report is strong in its advocacy of federal cooperation with provinces and Aboriginal peoples in the development of national standards. There are concerns in the Ministry regarding: delivery times for some priority projects, federal reluctance to act in partnership (particularly with respect to risk assessments), and the implications of potential staff reductions in Health Canada and Environment Canada.

CONTROLLING POLLUTION AND WASTES

This chapter of the Report includes subjects which are the subject of active federal/provincial discussion in fora such as NAICC and CCME.

International Air Pollution

The proposed course of action in this section confirms the current situation under the Comprehensive Air Management Framework.

International Water Pollution

The purpose of the recommended revision of CEPA is to ensure reciprocity with Section 310 of the US Clean Water Act, which empowers the federal government to take action against pollution which may be endangering the inhabitants of another country and which may be in violation of international agreements.

We are concerned about the possibility of provincial jurisdiction being circumvented by such provision. It is recommended that specific provision be made in the revised CEPA for consultation with a province before action is taken.

Reduction of Hazardous Wastes and Non-Hazardous Wastes

Federal/provincial consultation is needed regarding the practicality of future management and enforcement in this area, and, in the case of exports/imports, the trade implications of some proposals.

Discussion is also needed to clarify the following proposals: the application of economic instruments and financial incentives to reduce hazardous wastes; the definition of waste; product responsibility; the requirement for plans to reduce/phase out the quantity of hazardous wastes at a site; and, proposals regarding the export/import of hazardous and non-hazardous wastes.

ENFORCEMENT

Environment Canada recommends that the federal government's enforcement powers be enhanced. There is no allowance in the report for existing provincial legislation or environmental programs as they may relate to the requirements of an updated CEPA.

Most new powers or tools proposed in the chapter are already available to MOEE, e.g. negotiated settlements, ticketing, cease and desist orders.

Ontario could take advantage of the following recommended improvements if Ministry officials are designated as federal officers under CEPA:

- Administrative Monetary Penalties as an alternative to prosecution and court hearings,
- Seizure of vehicles,
- Court Orders for several purposes including: preventing continuation or repetition of offenses; compensation to the Minister for costs of preventive measures, and, funding research into ecological use and disposal of a substance.

Unlike proposed changes to CEPA, Ontario's orders provide for remediation but not for compensation and restitution. If Ontario enforces provisions of CEPA - would we also be able to claim the above compensation monies?

PUBLIC PARTICIPATION

Environment Canada proposes improved opportunities for public participation and has borrowed heavily from Ontario's Environmental Bill of Rights.

Care is needed to avoid duplication with the provisions of Ontario's legislation. It will be necessary to clarify federal and Ontario roles and responsibilities in several areas, for example, notice of proposed regulations etc. on respective registries.

EMERGENCIES

The report recommends that industry be required to prove that the elements of prevention, preparedness, response and recovery are being addressed. It is also recommended that Environment Canada be given the power to manage an environmental emergency, although the extent this potential involvement is not specified.

Ontario's role in the proposed federal scenario on emergencies is not clear.
The P2R2 approach, as recommended in the report, appears to be an excellent comprehensive approach to deal with emergencies. There is, however, a risk of duplication with Ontario's legislation (Part 9 of the Environmental Protection Act) which deals with all areas described in the proposal.

As most emergencies are local we believe that emergencies should be a provincial responsibility. The recommendation that all sites with specified quantities of hazardous substances be identified and registered may prove onerous for Ontario.

FEDERAL LANDS AND ABORIGINAL LANDS

The separation of aboriginal lands from federal lands is an improvement: the definition should also include lands which are subject to land claim or self-government agreement when the title or the ownership of the land is not with the federal government. Clarification is needed regarding the federal government's enforcement responsibilities on these lands.

Flexibility is needed to deal with several potential forms of aboriginal self-government. It is suggested that CEPA provide for the establishment of minimum standards that would be controlled by the federal government until replaced by adequate environmental controls by First Nations (in the same way as model by-laws for municipalities).

ADMINISTRATION

Several administrative changes are recommended, the most noteworthy being:

- CEPA National Advisory Committee: the role of this new committee needs to be explained in greater detail particularly with respect to the status of the provinces.

- Equivalency and Administrative Agreements: federal-provincial agreements will continue to be necessary as means of clarifying the relationship between the two orders of government in specific areas,

- Economic Instruments: there are several references in the recommendations to the potential to adopt economic instruments but without much detail as to how they will be used in conjunction with various aspects of CEPA,

- Non-Regulatory Approaches: further discussions are necessary to ensure consistency with Ontario's measures,

- Cost recovery: we understand that MOEE could share in Environment Canada's proposed cost recovery scheme if we undertake CEPA-related roles and responsibilities on behalf of the federal government.

ONTARIO OCCUPATIONAL HEALTH NURSES ASSOCIATION
Suite 605, 302 The East Mall, Etobicoke, Ontario M9B 6C7 Phone: (416) 239-6462 Fax: (416) 239-5462

April 9, 1996

The Honourable Sergio Marchi
Minister of the Environment
Terrasses de la Chaudiere
10 rue Wellington
Hull, Quebec
K1A 0H3

The Ontario Occupational Health Nurses Association (OOHNA) represents 1100 registered nurses, the majority of whom are employed in Ontario workplaces and for whom the commitment to health is manifest in their profession.

Just as Ontario has taken a stand to protect worker health from workplace hazards, the public should have the same rights that workers now enjoy, in terms of information with regard to and elimination of pollutants and polluters.

The protection of human health, safety and the environment should be a priority of the government in the regulation of biotechnology. We recommend that a section be added to the CEPA which applies to biotechnology products which may enter the environment.

The federal government needs to take a strong leadership role in environmental protection by setting strong environment standards.

Yours sincerely,

K Godden

Kay Godden, RN, COHN-S, COHN(C)
President

KG/ev

Mission Statement

To foster a climate of excellence, innovation and partnership enabling Ontario Occupational Health Nurses to achieve positive workplace health and safety objectives.

Dept

0-1025-31

39200

DEAR HONOURABLE DAVE DINGWALL

I REJECT the Liberal Government's response to the Standing Committee's report on the Canadian Environment Protection Act (CEPA), Revisited.

I DEMAND that my government present a strong position to protect my health and the environment by accepting the recommendations as written in the Standing Committee's report,

IT'S ABOUT OUR HEALTH:
TOWARDS POLLUTION PREVENTION

Name: LILA PARKER - FOOD IRRADIATION ALERT
Lila Parker

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Burnaby BC V5G 1T3

QUINTE ENVIRONMENTAL RESOURCES ALLIANCE
P.O. Box 22094, Belleville, Ontario K8N 5V7 (613) 962-2459

March 22, 1996

To those in a position of Federal and/or Provincial power

Re: Proper Waste Management Approvals Process and Toxic Control

Myself and the Quinte Environmental Resources Alliance (QERA) are concerned about human health and environmental protection in Canada. I urge you to consider these recommendations and key points to ensure environmental integrity for us and future generations of Canadians:

1. Keep waste disposal approvals, including landfills, incinerators and energy from waste facilities, under the full environmental assessment process. This means maintaining current requirements to address a need for the facility, alternatives to the proposal, including the 3Rs and different types of disposal facilities, and different possible sites for the disposal facility.

2. Ensure that the opportunities for citizens to have full public hearings on waste disposal are maintained.

3. Extend intervenor funding to ensure that the public have the opportunity to be serious participants in the hearing process.

4. Ensure that there is a full opportunity for public input before the provincial government makes any changes in the approvals process.

5. The federal government should take a strong leadership role in environmental protection by setting strong environmental standards.

6. The use and release of chemicals that persist in the environment and build up in wildlife and humans should be banned or phased out, since neither humans nor the environment can tolerate these substances.

7. The Canadian public needs an Environmental Bill of Rights, which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

8. The Canadian public should also have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration.

9. The protection of human health, safety and the environment should be the priority of the government in the regulation of biotechnology. A new section should be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment through any means.

10. New provisions must be enacted to require all sectors of society to prevent the use and generation of pollutants rather than to control them.

Yours truly,

Karyn Wright
Chairperson, QERA

Sioux Lookout Citizens Group in Response to CEPA Reforms
c/o Sarah Brown
Box 4150
Sioux Lookout, Ontario
P8T 1J9

March 21, 1996

The Honourable Sergio Marchi
Environment Minister
Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0A2

Dear The Honourable Sergio:

Please find enclosed letters from the Sioux Lookout citizens group in response to CEPA reforms. All letters are signed.

Sincerely,

S. M. Brown (spokesperson).

The Sioux Lookout Citizens Group in Response to CEPA Reforms

cc: Standing Committee House of Commons
The Right Honourable Jean Cretien
Prime Minister

March 11, 1996

The Honourable Sergio Marchi
Environment Minister
Terrasses de la Chaudiere, 80 Wellington St.,
Hull PQ, K1A OH3

Dear Minister Sergio Marchi,

We, the undersigned Sioux Lookout citizen's group, are writing to express our dissatisfaction with Federal proposals to reform CEPA.

We want the federal government of Canada to take a strong leadership role in environmental protection by setting strong environmental standards.

We want Canadian citizens to have an Environmental Bill of rights which includes the right to intervene when the environment is being harmed and the right to sue polluters who break the law.

We want the use and release of chemicals that persist in the environment and build up in wildlife and humans to be banned or phased out, since neither humans nor the environment can tolerate these substances.

We have the right to know who is releasing which pollutants into the environment through comprehensive public access to information that includes all toxic releases to the environment, including substances sent off-site for recycling or incineration.

We want the protection of human health, safety and the environment to be the priority of the government in the regulation of biotechnology. We want a new section to be added to CEPA, to be administered by Health Canada and Environment Canada, which applies to all biotechnology products which may enter the environment.

We want new provisions to be enacted to require all sectors of society to prevent the use and generation of pollutants rather that to control them. We look forward to your response.

Very truly yours,

Sioux Lookout citizens group in
response to CEPA reforms

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VINYL COUNCIL OF CANADA
CONSEIL DU VINYLE DU CANADA

April 4, 1996

Ms. Ruth Wherry
Director, Intergovernmental and
Legislative Accountability
CEPA Office
351 St. Joseph Blvd.
Hull, Quebec
K1A 0H3

Fax: 1-819-997-0449

Dear Ms. Wherry:

The Vinyl Council of Canada has been following the process to renew the Canadian Environmental Protection Act (CEPA) with great interest. We support the federal government's efforts to improve the efficiency and effectiveness of existing legislation, and are encouraged by the openness of the process. We would therefore like to take this opportunity to comment on several aspects of the Government Response to the CEPA Review.

Uncertainty over the treatment of toxic substances

Our major concern when reviewing the Government Response has been the possibility of increased uncertainty over the treatment of toxic substances. We have supported the Toxic Substances Management Policy and the Five Part Action Plan, and have negotiated a Memorandum of Understanding with the Government of Canada on Environmental Performance and Competitiveness.

Inherent toxicity

Significant confusion remains concerning the treatment of toxic substances. Although the Government Response indicates that the federal government is satisfied that section 11 of CEPA does adequately support risk-based decision making, it does not adequately define the concept of "inherent toxicity." This needs to be clarified.

Extraterritoriality

The Vinyl Council of Canada does not support the concept of extraterritoriality. With regard to section 9.2, Canadian environmental protection legislation must not be subject to the potentially anomalous nature of foreign public policy processes and must be developed in response to the uniqueness of the Canadian context. We do not support the automatic screening of any substance that has been banned, sunsetted or severely restricted in any other OECD country.

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PHONE 905-678-7748 FAX 905-678-0774

A DIVISION OF THE SOCIETY OF THE PLASTICS INDUSTRY OF CANADA

Virtual elimination

The meaning of "virtual elimination" remains unclear. Section 9.7 of the Government Response proposes that a definition of virtual elimination be included in a renewed CEPA and that it be consistent with that described in the federal Toxic Substances Management Policy (TSMP). Although the TSMP proposes to achieve virtual elimination through activities such as pollution prevention planning and remediation, it does not provide criteria which define the concept.

Loss of confidentiality

The second major problem area in the Government Response is the potential loss of commercial confidentiality. The Vinyl Council of Canada is concerned that providing the Minister of Environment with the power to collect any type of information, under any circumstances, and enhancing public access to such information, greatly compromises industry's right to confidentiality. This situation may be particularly problematic in the event that operational or production-related information is disclosed through the mandatory publication of pollution prevention plans.

Section 4.4 of the Government Response states that providers of sensitive information would have the opportunity to request confidentiality of that information. However, the criteria to substantiate confidentiality proposed in section 4.5 are limited, and, as a result may be subject to broad interpretation by the Minister. Moreover, the process of substantiating confidentiality may impose unreasonable costs on data providers who are forced to appeal unacceptable ministerial decisions.

The Vinyl Council of Canada

The Vinyl Council of Canada, formed in 1994, is a national trade group representing over 50 companies, including PVC resin and additive producers and processors representing virtually every rigid end-use for PVC. The Council is a division of the Society of the Plastics Industry of Canada and is located in Mississauga, Ontario.

I would like to thank you again for the opportunity to comment on the Government Response to the CEPA Review. If you have any questions, please feel free to call.

Yours sincerely,

Marion Axmith

Marion E. Axmith, CAE
Director